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United States Circuit Court of Appeals,

FOR THE SECOND CIRCUIT.

THE STELOS COMPANY, INCORPORATED,
Plaintiff-Appellant,

against

HOSIERY MOTOR-MEND CORPORATION, KAYSER HOSIERY MOTOR-MEND CORPORATION, JULIUS KAYSER & COMPANY, a Corporation,
Defendants-Appellees.

Statement.

This is an action to recover for past infringements of a patent and to enjoin future infringements, and for an accounting.

The subpoena was served on defendant, Hosiery Motor-Mend Corporation, on the 5th day of February, 1929. On the 25th day of February, 1929, the Hosiery Motor-Mend Corporation served and filed its answer to the aforesaid complaint. On the 16th day of July, 1930, Hon. William Bondy of the District Court of the United States for the Southern District of New York signed an order joining defendants Kayser Hosiery Motor-Mend Corporation and Julius Kayser & Company, a corporation, as parties defendant, and on August 18, 1930, defendants Kayser Hosiery Motor-Mend Corporation and Julius Kayser & Company, a corporation, filed answers to plaintiff's complaint. On the 28th day of July, 1930, an order was signed

Statement.

by Honorable William Bondy of the District Court of the United States for the Southern District of New York, allowing plaintiff to amend its complaint and on the same day plaintiff filed its amended complaint. On the 18th day of August, 1930, the defendants Kayser Hosiery Motor-Mend Corporation and Julius Kayser & Company, a corporation, filed their answers to the complaint as amended. On January 26, 1931 defendant Hosiery Motor-Mend Corporation filed its amended answer to the complaint as amended in accordance with
5 an order signed that day by Judge Caffey of the District Court for the Southern District of New York. This same order allowed defendants Kayser Hosiery Motor-Mend Corporation and Julius Kayser & Company, a corporation, to file amended answers which was done on the 26th day of January, 1931.

None of the defendants in this action were arrested nor was any bail taken from any of the above-named defendants or any of their property attached.

The case came on for trial before Hon. John M. Woolsey of the District Court for the Southern
6 District of New York, on the 19th day of March, 1932, and lasted for nine days. No matter involved in the case was referred to a commissioner or commissioners, master or referee.

The final decree was entered herein on the 11th day of April, 1932, no interlocutory decree having been granted.

Hon. Frank C. Coleman of said District Court allowed an appeal with supersedeas on the 30th day of April, 1932.

Bill of Complaint.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, INCORPORATED, Plaintiff, vs. HOSIERY MOTOR-MEND CORPORATION, Defendant.	In Equity No.

TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

This is a suit in equity arising under the patent laws of the United States.

I.

The Stelos Company, Inc., a corporation organized and existing under the laws of the State of Delaware, a resident of said State, and having its principal office in the District of Columbia, brings this Bill of Complaint against the Hosiery Motor-Mend Corporation, incorporated under the laws of the State of Delaware, operating the Vanitas System and using the Finch Sliding Latch Needle, and having the following officers: J. R. Harbeck, President, and L. M. Adams, treasurer, said corporation having its principal and established place of

business at 40 East 34th Street, in the City and State of New York, and therefore complains and says:

II.

Frank C. Stephens, a citizen of the United States, being prior to September 25, 1923, the original, first and sole inventor of a certain new and useful improvement in a Needle and its Method of Use, lawfully filed and prosecuted an application for
11 United States Letters Patent therefor, and having complied in all respects with the statute and rules of the United States Patent Office, Letters Patent No. 1564379 were granted December 8th, 1925.

That subsequent to the issuance of the aforesaid patent, to wit: on the 23rd day of March, 1926, said Frank C. Stephens and The Stelos Company, Inc., assignee, surrendered said Letters Patent and made application for its reissue, complying in all respects with the Statutes and Rules of the United States Patent Office pertaining thereto, and as a result reissue Letters Patent No. 16360 were granted on June 8th, 1926, a duly authenticated
12 copy of said reissue patent being brought here into court to be taken as part of this Bill of Complaint.

Said invention of Frank C. Stephens was new, useful and not known or used by others in this country before his invention thereof, or patented or described in any printed publication anywhere before his invention thereof, or more than two years prior to said application for United States patent therefor, or in public use or on sale in the United States for more than two years prior to said application, or patented in any foreign coun-

try by him or his legal representatives on an application filed more than one year before his said application filed in the United States Patent Office and said invention has never been abandoned.

III.

Said Letters Patent No. 1564379 and Reissue Letters Patent No. 16360, and the invention therein set forth, were, by direct and mesne assignments transferred to the Stelos Company of America, Inc., and by that Company by an instrument in writing duly executed on the 5th day of November, 1927, to the plaintiff company, and is now the property of the plaintiff herein.

IV.

The invention set forth in said reissue patent No. 16360 dated June 8th, 1926, is of much value to plaintiff, and there is a large and rapidly increasing demand for same, which demand plaintiff has ample facilities for supplying.

V.

Heretofore, to wit: on the 9th day of March, 1927, the Stelos Company of America, Inc., being then and there the owner of said Reissue Letters Patent No. 16360, and entitled to the benefit and protection thereof with respect to the invention claimed therein, filed its Bill of Complaint in equity in the U. S. District Court within and for the Western Division of the Western District of Missouri, against Evelyn Stark, having her principal office and place of business in the City of

Kansas City, Missouri, in a certain cause docketed in said court as Cause 795 in Equity, alleging an infringement by the said defendant in the said cause of said reissue Letters Patent No. 16360, by the manufacture, sale, and use of needles and by employing the method of use embodied and contained in said invention set forth and described and claimed in the said reissue Letters Patent No. 16360 aforesaid, and thereafter the said defendant answered the said Bill of Complaint in said suit and put in issue inter alia the validity of said
17 U. S. reissue Patent and also the alleged infringement thereof, and the said cause thereupon being at issue before the said court, the Hon. Merrill E. Otis, District Judge, then and there presiding, and the cause coming on to be heard upon the motion of the then plaintiff for an order of temporary injunction, and the then plaintiff appearing by counsel, and the defendant appearing in person and by counsel, and the Court having in open court heard the affidavits, evidence and arguments of counsel for the plaintiff and defendant, and having witnessed demonstrations of the operation as set forth in the patent in suit, and having been fully ad-
18 vised in the premises, did, on June 9th, 1927, order that until the further order of the Court, the defendant, her agents, servants, employees, and all persons working in concert or co-operation with her, be enjoined from in any way infringing upon reissue Letters Patent No. 16360, dated June 8th, 1926, and then the property of the Stelos Company of America, Inc., and now the property of the plaintiff herein, the said Letters Patent relating to an improvement in a needle and its method of use, a duly authenticated copy of which order of temporary injunction is ready in court to be pro-

duced and to be taken as part of this Bill of Complaint, and this cause having come on to be heard further, and the Court having heard the evidence and arguments of counsel, and having been fully advised in the premises, ordered, adjudged and decreed that the reissue Letters Patent No. 16360, granted on June 8, 1926, are good and valid, and that the defendant had infringed and violated said Letters Patent, and that the preliminary injunction issued be and the same was made final on the 10th day of October, 1927, a duly authenticated copy of which final decree is ready in court to be produced and to be taken as part of this Bill of Complaint.

VI.

Heretofore, to wit, on the 23rd day of November, 1927, The Stelos Company, Inc., being there and then the owner of said Reissue Letters Patent No. 16360, and entitled to the benefit and protection thereof with respect to the invention therein claimed, filed its Bill of Complaint in equity in the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, against the May Department Store Company, trading as Famous-Barr Company, and Green-Jac Sales Company, the said Green-Jac Sales Company having its principal office and place of business in the City of St. Louis, State of Missouri, in a certain cause docketed in said court as No. 8070 in Equity, alleging an infringement by said Green-Jac Sales Company in the said cause of said reissue Letters Patent No. 16360, by the manufacture, sale and use of needles and by employing the method of use embodied and contained in said invention set

forth and described and claimed in the said reissue Letters Patent No. 16360 as aforesaid, and thereafter the said defendant, Green-Jac Sales Company, after due service of process, having failed to answer said Bill of Complaint, and the said cause being then before the Court on the Bill of Complaint of the plaintiff, and the then plaintiff appearing by counsel, and representing to the Court that the then plaintiff was the sole and exclusive owner of reissue Letters Patent No. 16360, of the United States, dated the 8th day of June,
23 1926, for improvement in needle and its method of use, and that the plaintiff was also owner of all rights to recover damages and profits from all infringers of said letters patent, that said letters patent were good and valid, and had been infringed by the said Green-Jac Sales Company by the manufacture, use, or sale of needles embodying said invention or by practicing the method defined and set forth in Claim 23 of said letters patent, the Court thereupon, on the 21st day of December, 1927, ordered, adjudged and decreed that the said Green-Jac Sales Company, its officers, agents, attorneys, servants, employees and workmen, be commanded and enjoined for the remainder of the term of the
24 life of said letters patent from making, using, or vending in any form or manner, directly or indirectly, the needle and the method of use set forth and defined in said letters patent, and from further offering for sale or advertising said needles or method of use, or aiding or abetting or in any way contributing to infringement of said letters patent, or granting to any person or persons any so-called right or privilege to use said needle or any needle made in similitude thereof, or the method described and set forth in said letters patent, and from in any

manner infringing or violating any of the rights or privileges granted or secured to plaintiff by said letters patent; a duly authenticated copy of which decree is ready in court to be produced and to be taken as part of this Bill of Complaint.

VII.

Plaintiff further shows that it has been the policy of its predecessors to grant franchises and leases both for the use of the articles patented and the method of repairing runs in knitted goods, as hosiery. Among those to whom franchises and leases for certain centers and territory have been granted are the following:

Joseph Horne Co.,	Pittsburgh, Pa.
J. L. Hudson Co.,	Detroit, Mich.
Cleveland Stelos Co.,	Cleveland, Ohio
Southern Stelos Co.,	Washington, D. C.
California Stelos Co.,	San Francisco, Cal.
Mend-A-Run,	Kansas City, Mo.
L. S. Ayres & Co.,	Indianapolis, Ind.
The McAlpin Co.,	Cincinnati, Ohio
The Eastern Stelos Co.,	Philadelphia, Penna.
M. Rich & Bros. Co.,	Atlanta, Georgia
Binghamton Stelos Co.,	Binghamton, N. Y.
Jordan-Marsh Co.,	Boston, Mass.
The Hennessy Co.,	Butte, Montana
Sanger Bros.,	Dallas, Texas
Linn & Scruggs,	Decatur, Illinois
Eastern Stelos Co.,	Eastern Part of Penna.
Louisville Stelos Co.	Louisville, Kentucky
New Haven Stelos Co.,	New Haven, Conn.

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J. L. Brandeis & Sons,	Omaha, Nebraska
Maas Brothers, Inc.	Tampa, Fla.
The Utica Stelos Co.,	Utica, N. Y.
C. Thomas Kemp,	Frederick, Md.
Miller & Rhoads,	Richmond, Va.
The Meyer's Co.,	Greensboro, N. C.
Frederick & Nelson,	Seattle, Wash.
Chicago Stelos Co.,	Chicago, Ill.

VIII.

29 The plaintiff is informed and believes, and therefore avers that the defendants have been, after the issuance of said Letters Patent, and before the commencement of this suit, and still are, within the said State of New York, and elsewhere in the United States, infringing plaintiff's exclusive rights granted by said patent, either by making, using or selling said needles and/or operating needles according to the teachings of said patent, or by contributing to the infringement by instructing the purchasers and users of needles to use the same in accordance with the teachings of the method set forth in the patent in suit, and more particularly
30 Claim 23 of said patent to the method of operation of the needle.

IX.

That since the grant of said reissue Letters Patent No. 16360, dated June 8th, 1926, the owners thereof have marked or caused to be marked the needles embodying the invention and improvements of said Letters Patent, and also the boxes containing the needles, which have been made, sold or used by the plaintiff, or under its authority, by

affixing thereon the word "Patented", together with the patent number and the day and year on which said Letters Patent were granted. 31

X.

Defendants have been duly notified in writing of its infringement, but defendants are continuing to make, use and sell needles and employ the method of operation, and by its printed literature, demonstrations, and otherwise, to teach purchasers of the needles to use them in exact accordance with the teachings of reissue Letters Patent No. 16360 in suit, and more particularly the method set forth in Claim 23 of said patent, and in violation of plaintiff's rights and in infringement of said Letters Patent, whereby plaintiff has been greatly and irreparably damaged, and whereby defendant has obtained and is obtaining large profits which in equity belong to plaintiff, the amount of which damages and profits plaintiff cannot ascertain except by an accounting. 32

WHEREFORE PLAINTIFF PRAYS:

(a) That Defendant be required to answer this Bill of Complaint, but not under oath, answer under oath being expressly waived. 33

(b) That the Court grant a preliminary injunction pending this suit, and an order to show cause why such a preliminary injunction should not be granted pending this suit, and a perpetual injunction restraining this defendant, its agents, employees and confederates from making, using or vending the needle and the method of use set forth and defined in said Letters Patent, and from offering

34 *Bill of Complaint.*

or advertising or in aiding or abetting or in any way contributing to the infringement of said Letters Patent.

(c) That this case be referred to a Master, and an accounting be taken of the profits received by defendant, and that the damages be increased threefold, and that the plaintiff have judgment for such damages and profits and for the costs of this suit.

(d) That a subpoena ad respondendum issue directed to the Hosiery Motor-Mend Corporation, de-
35 fendant.

(e) That plaintiff have such other and further relief as equity may require.

THE STELOS COMPANY, INC.,
By FRANK C. STEPHENS,
Vice-President.

Attest:
RUTH HARVEY,
Secretary.

VERNON E. HODGES,
36 639 F. Street, N. W., Washington, D. C.

HENRY GILLIGAN,
Otis Building, Washington, D. C.,
Counsel for Plaintiff.

DANIEL BURKE,
Solicitor.

DISTRICT OF COLUMBIA, SS.:

On the 28th day of January, 1929, at Washington, District of Columbia, before me, Wm. H. Hutcherson, a notary public, personally appeared Frank C. Stephens, who being first duly sworn, did depose and say that he is the Vice-President of The Stelos Company, Inc., the plaintiff named in the foregoing Bill of Complaint, that he signed the same as such officer, that he has read the said Bill subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

FRANK C. STEPHENS.

Witness my hand and Notarial Seal.

WM. H. HUTCHERSON,
My Commission expires November 27, 1930.

40 **Answer.**

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, INCORPORATED, Plaintiff, vs. HOSIERY MOTOR-MEND CORPORATION, Defendant.	In Equity No. 48-16.

41

Defendant, Hosiery Motor-Mend Corporation, answers the bill of complaint herein and says:

I.

It has no knowledge as to whether plaintiff, The Stelos Company, Incorporated, is a corporation organized and existing under the laws of the State of Delaware, a resident of said State, and having its principal office in the District of Columbia, and, therefore, on information and belief, denies the al-
42 legations of the bill of complaint with respect thereto.

The Defendant, Hosiery Motor-Mend Corporation, admits that it is a corporation incorporated under the laws of the State of Delaware, and having the following officers:

J. R. Harbeck, President, and
L. M. Adams, Treasurer,

but denies that it has a place of business, regular or otherwise, in the City and State of New York, where it has committed any acts of infringement.

Answer.

Defendant admits that it uses a system known as the Vanitas System for repairing runs in hosiery, and that in practicing such system it uses a machine which employs a sliding latch needle, known as the Finch Sliding Latch Needle, but denies that such use infringes plaintiff's Letters Patent.

II.

Defendant denies each and every allegation contained in paragraph II of the bill of complaint filed herein; and

Defendant, as to the method, process and apparatus claimed to be disclosed and covered by said patent No. 1,564,379 and Reissue Letters Patent No. 16,360, asserted in the bill of complaint, specifically:

(a) Denies that the said Frank C. Stephens, was the original, first or sole inventor of said alleged new and useful invention, method, process and apparatus claimed to be illustrated and described in and covered by said Letters Patent and Reissue Letters Patent in suit aforesaid.

(b) Denies that said Letters Patent or Reissue Letters Patent were duly issued on said applications in due form of law or that all the requirements of the statutes of the United States then in force and rules of the United States Patent Office pertaining thereto were complied with, or that they or either of them were issued after due examination as to novelty, patentability and utility of the invention described, or that said Letters Patent, or Reissue Letters Patent, granted to the

patentee therein, or his alleged assignee, for the full term of seventeen (17) years from the date thereof, or for any other term, the exclusive right to make, use and vend said alleged invention purported to be set forth and described in the claims therein, throughout the United States and territories thereof, or in any place.

(c) Denies that said invention, method, process and apparatus was not known or used by others in this country before the alleged invention of an
47 improvement in a Needle and Its Method of Use of Frank C. Stephens and not patented or described in any printed publication in this or any foreign country before the said alleged invention or discovery thereof, or more than two years prior to the application for Letters Patent therefor, or that no application for any foreign patents were filed more than twelve (12) months prior to the filing of the application for Letters Patent in this country which issued into said Letters Patent No. 1,564,379, or that said alleged improvement had not been in public use or on sale in the United States for more than two (2) years prior to the said alleged application for Letters Patent, or that
48 same had not been abandoned to the public.

III.

Defendant denies that, by instruments in writing, the applicant or patentee of the said enumerated Letters Patent and Reissue Letters Patent in suit did assign to the plaintiff herein each and every of said patents or the alleged invention therein set forth and denies that the plaintiff is now the owner of said Letters Patent or Reissue Letters Patent, or any rights thereunder.

Answer.

49

IV.

Defendant has no knowledge, except as contained in the bill of complaint, that the alleged invention set forth in the Reissue Patent here in suit is of value or that there is a large and increasing demand for same or that plaintiff has ample facilities for supplying said demand, if any, and therefore defendant denies the same.

V.

50

Defendant has no knowledge, except by said bill, whether or not the Stelos Company of America, Inc., instituted and prosecuted a suit for infringement in the district court of the United States for the western division of the western district of Missouri against Evelyn Stark, or that judgment of the court was pronounced or that a decree was entered therein affirming the validity of said Reissue Letters Patent sued on, or a perpetual injunction was granted and issued against the said Evelyn Stark, and it therefore denies the same; but this defendant says that it is informed and believes that a certain suit was brought by the said Stelos Company of America, Inc., against one Evelyn Stark in 51
the western district of Missouri and that an answer was filed in the said suit and that the case was determined without a trial on the merits of the controversy, and denies that the decree in the said case in any way affected or concerned any needle or its method of use similar to needles made or sold or the method of using said needles employed by the defendant herein.

52 *Answer.*

VI.

Defendant has no knowledge, except by said bill, whether or not the Stelos Company, Inc., instituted and prosecuted a suit for infringement in the district court of the United States for the eastern division of the eastern district of Missouri against the May Department Store Company, or that judgment of the court was pronounced or that a decree was entered therein affirming the validity of said Reissue Letters Patent sued on, or a perpetual injunction was granted and issued against the said
53 May Department Store Company, and it therefore denies the same; but this defendant says that it is informed and believes that a certain suit was brought by the said Stelos Company, Inc., against one May Department Store Company in the eastern district of Missouri and that no answer was filed in the said suit and that the case was determined without a trial on the merits of the controversy and that the Stelos Company, Inc., took a decree pro confesso by default of the May Department Store Company to answer and denies that the decree in the said case in any way affected or concerned any needle or its method of use similar
54 to needles made or sold or the method of using said needles employed by the defendant herein.

VII.

Defendant has no knowledge, except as alleged in said bill, of the policy of plaintiff, or its predecessors, to grant franchises or leases for the use of the articles patented or the method of repairing runs in knitted goods, as hosiery, or to whom such alleged franchises or leases were granted and there-

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fore denies all of the averments in paragraph VII of said bill.

Defendant denies that the alleged invention and improvements set forth in the said Reissue Letters Patent in suit are of great, or of any utility; it denies that the trade or the public, generally or otherwise, have acquiesced in the alleged validity of the said Reissue Letters Patent, or have recognized any alleged rights of the said plaintiff in or under the same; it denies that the said Reissue Letters Patent have heretofore been, or are, of great, or of any value; and it further denies that any protection 56
can lawfully be obtained under or by virtue of the said Reissue Letters Patent, as well as that even if any lawful protection could be obtained, the said Reissue Letters Patent would be of great, or any value, or that great, or any profits would accrue to the said plaintiff herein.

VIII.

Defendant denies each and every of the allegations contained in paragraph VIII of the bill and specifically denies that the defendant has infringed the patent in suit since the grant of said patent and 57
within six (6) years before the commencement of this suit, by making, using or selling a needle containing and embodying the alleged invention set forth and covered by said Reissue Letters Patent sued upon, or that it has operated needles according to the teachings of said patent, or that it has contributed to the infringement by others by instructing the purchasers and users of its needles to use the same in accordance with the teachings of the method set forth in the patent in suit, and more particularly in claim 23 of said patent to the

method of operation of the plaintiff's needle, or that it has in any way infringed upon the exclusive rights, or any rights, of the plaintiff, or intended so to do, in the United States and in the southern district of New York, or elsewhere.

Defendant further denies that it threatens to continue said alleged infringement, or that the plaintiff has been damaged in any wise by any acts of the defendant, or that it has a regular and established place of business in this district where it committed the alleged acts of infringement.

59 Defendant further denies that it has at any time, in any place, or in any manner, infringed upon said patent in suit or any of the claims thereof, or any rights of the plaintiff, or that it is now infringing said patent or intends so to do.

IX.

Defendant has no knowledge as to whether, since the grant of said Reissue Patent sued upon, the owners thereof have marked or caused to be marked any needles embodying the alleged invention and improvements of said Letters Patent or the boxes containing the same with the word "Patented" to-

60 gether with the patent number and the day and year on which said Letters Patent were granted and therefore defendant denies that any needles made, sold or used by the plaintiff, or under its authority have been marked with the statutory notice.

X.

Defendant denies that it has been duly notified, in writing or otherwise, of any infringement of said Reissue Letters Patent No. 16,360, but does admit

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the receipt of a letter dated January 25, 1929, from plaintiff's attorney complaining of some infringement without identifying the patent alleged to be infringed and defendant was not notified of any infringement of any specific patent except by the filing of this bill.

Defendant denies that it ever has, or is continuing to make, use or sell needles or to employ the method of operation, or by its printed literature, demonstrations, or otherwise, to teach purchasers of its needles to use them in accordance, exact or otherwise, with the teachings of Reissue Letters 62
Patent No. 16,360 in suit, or more particularly the method set forth in claim 23 of said patent.

Defendant denies that it has violated any rights of plaintiff, or that by reason of any alleged infringement of said Letters Patent profits have resulted to defendant or that the plaintiff has been damaged thereby.

XI.

Defendant charges and alleges:

(a) That said Reissue Letters Patent in suit No. 16,360, and each and every part and claim thereof, 63
is void and of no effect in law because the alleged invention and improvements asserted to be therein described, discovered and claimed had been, long prior to the alleged invention or discovery thereof by the said Frank C. Stephens, or more than two (2) years prior to the alleged date of the application for said patent, patented, described, and fully disclosed to the public in various patents and other printed publications in the United States and foreign countries.

64 *Answer.*

(b) That said Frank C. Stephens was not the original, first or true inventor or discoverer thereof, or of any material or substantial part of the alleged method, process or apparatus claimed to be patented therein, but that the same had been in public use and on sale in this country for more than two (2) years prior to his application for said patent, and each and every part thereof had been invented, discovered, known to, patented and described in printed publications, including foreign and United States patents, and used by others in this country, and elsewhere, before the alleged invention or dis-
65 covery or appropriation thereof by the said Frank C. Stephens.

(c) That what is described and claimed in said patent was old and well known prior to the alleged invention of the said Frank C. Stephens, and did not, in view of the prior art, involve patentable invention.

(d) That the method, process and apparatus claimed in said patent in suit had, prior to the alleged date of invention of this patent, been abandoned to the public.

66 The following patents, names of parties mentioned in said patents with the addresses there given, printed publications, including all foreign and United States patents hereinafter set up, prior users, inventors, discoverers and those having prior knowledge are among those supporting these defenses, and to which defendant makes reference and gives notice, to-wit:

UNITED STATES PATENTS

Date Filed	*Date Issued*	*Number*	*Patentee*
	Jan. 9, 1849	6,025	J. Hilbert
	Oct. 22, 1872	132,382	Bickford
	June 30, 1874	152,466	E. P. Curtiss
	July 24, 1888	386,636	Jones, Jr.
	May 1, 1900	648,722	W. J. Beyer
	July 2, 1901	677,832	J. J. Wickham
	Oct. 5, 1909	935,841	H. E. Fife
	April 26, 1910	956,318	Egly
	Dec. 27, 1921	1,401,728	E. J. Post
June 11, 1923	Jan. 27, 1925	1,524,328	A. R. Wolverton
June 27, 1923	May 5, 1925	1,536,274	O. C. Semonsen
June 27, 1923	May 5, 1925	1,536,275	O. C. Semonsen

BRITISH LETTERS PATENT

	Oct. 13, 1894	24,311 of 1893	Lee et al
	Sept. 15, 1921	168,817	Pogson
June 13, 1921	May 23, 1922	180,730	J. M. Ortega

GERMAN LETTERS PATENT

	Dec. 19, 1899	106,861	Hartig
Jan. 26, 1921	Sept. 16, 1922	359,064	Kleemann
Aug. 18, 1921	Oct. 19, 1922	361,782	Kleemann

PRINTED PUBLICATIONS

The Letters Patent hereinbefore recited:

British Patent to Pogson No. 168,817,
Published on or about September 15, 1921.
British Patent to Lee et al No. 24,311 of 1893,
Published on or about October 13, 1894.
British Patent to J. M. Ortega No. 180,730,

Published on or about May 23, 1922.
German Patent to Hartig No. 106,861,
Published on or about December 19, 1899.
German Patent to Kleemann No. 359,064,
Published on or about September 16, 1922.
German Patent to Kleemann No. 361,782,
Published on or about October 19, 1922.
Printed Instructions for operating Gearhart's Knitting Machine, copyrighted 1920 by Gearhart
Knitting Machine Company, Clearfield, Pa.,
Published in 1920. New edition Nov. 1, 1921.

Defendant further avers that the alleged invention set forth and claimed in the patent in suit and every substantial part thereof, was, long prior to any date of invention alleged by plaintiff's patentee, known to, used, invented, devised, and reduced to practice, in the United States Patent Office with specifications and drawings in which said invention, and every substantial and material part thereof, was fully described and illustrated prior to the date of filing the application for the patent in suit.

Said prior applications were filed by and on the dates and resulted in the United States Patents as specified below:

Date Filed	*Date Issued*	*Number*	*Patentee*
une 11, 1923	Jan. 27, 1925	1,524,328	A. R. Wolverton
une 27, 1923	May 5, 1925	1,536,274	O. C. Semonsen
une 27, 1923	May 5, 1925	1,536,275	O. C. Semonsen

Defendant further avers that each and every one of the claims of the patent in suit asserted by plaintiff, in view of limitations imposed by the Patent Office and accepted by the patentee during the

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prosecution of his application for said patent, and in view of the prior art, must be so construed as to prevent them from being held infringed by any of defendant's apparatus, method or process.

XII.

Defendant avers that the things patented in said Reissue Patent No. 16,360 had been known prior to the alleged invention or discovery by the said Frank C. Stephens or more than two years prior to his application for patent No. 1,564,379 and the Reissue Patent in suit, and every material and substantial part of said alleged invention claimed as new in the patent in suit had been known and also publicly used by others in this country prior to the alleged invention or discovery by the said Stephens or more than two years prior to his application for patent No. 1,564,379, by the following concerns, and persons, at the following places:

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1. Alberta Mills, Inc., of and at Philadelphia, Pa., by its employees and specifically by John Cunningham of Philadelphia, Pa.

2. Atlantic Silk Hosiery Co., Inc., of and at Paterson, New Jersey, by its employees and specifically by W. Gartska of Paterson, N. J.

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3. Continental Mills, Inc., of and at Philadelphia, Pa., by its employees and specifically by Charles Kiler, John Henderson and Mary Houston, all of and at Philadelphia, Pa.

4. Ernest H. Fox, of and at Rockland, Tenn.

5. Gearhart Knitting Machine Company, of and at Clearfield, Pa., and its successor, Clearfield Knitting Machine Company, of and at

Clearfield, Pa., by its employees and specifically by E. J. Gearhart of Clearfield, Pa.

6. Hanifin Knitting Mills, of and at Philadelphia, Pa., by its employees and specifically by Thomas Donahue, Charles Felton and M. Walton, of and at Philadelphia, Pa.

7. Phoenix Knitting Works, and its successor Phoenix Hosiery Company, of and at Milwaukee, Wisconsin, by its employees and, specifically by Emily Francikowska, Martha
77 Leuczkowska, Julius Ruedt, and Marjorie Converse.

8. Puritan Knitting Mills, of and at Philadelphia, Pa., by its employees, and specifically by Rose Yanik, of Philadelphia, Pa.

9. Rockwood Hosiery Mills, of and at Rockwood, Tenn., by its employees and specifically by Mary Emma Jones and James A. Hoff, both of and at Rockwood, Tenn.

10. W. J. Steere, of and at Rockwood, Tenn.

11. Taubel Mills, of and at Riverside, New Jersey, by its employees and specifically by
78 Mrs. Charles Clouser and Elizabeth McCarten, both of and at Philadelphia, Pa.

12. United Hosiery Mills Corporation, of and at Chattanooga, Tenn., by its employees, and specifically by Frank Ancott of Chattanooga, Tenn.

13. Deal Knitting Mill at Philadelphia, Pa., by its employees.

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XIII.

Defendant, further answering, avers that the alleged invention patented in and by said Reissue Patent and particularly as pointed out in claim 23 thereof, in view of the prior state of the art at the time that the same was alleged to be made and as known and practiced in this country by various persons and at various places hereinbefore mentioned, did not constitute a patentable improvement or invention within the meaning of the patent law, that said Letters Patent and particularly claim 23 thereof did not describe or claim legally patentable subject matter, invention, or discovery, and that said alleged improvement required for its production only the ordinary skill and knowledge, such as was possessed generally by workers in the art to which said Letters Patent pertains; wherefore, as the defendant is advised, said Letters Patent and each and every of the claims thereof, and particularly claim 23 thereof, are void and of no effect at law.

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XIV.

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Defendant, further answering, avers that the matter covered by claim 23 of said Reissue Patent is not a statutory subject of patent; that it defines no patentable invention; that the Commissioner of Patents exceeded his authority in granting said patent; and that the alleged method defined in claim 23 is not a patentable art or method in that it depends for its execution upon certain specific mechanical instrumentalities.

82 *Answer.*

XV.

Defendant avers that in view of the state of the art as it existed at and prior to the time of the said alleged invention by the said Stephens, and as evidenced by the patents, publications and knowledge hereinbefore referred to, particularly the British Patent to Pogson No. 168,817, issued on September 15, 1921; the German Patent to Kleemann No. 359,064, issued on September 16, 1922; and the United States Patents to J. Hilbert No. 6,025, issued January 9, 1849; E. P. Curtiss No. 152,466,
83 issued June 30, 1874; J. J. Wickham No. 677,832, issued July 2, 1901; O. C. Semonsen No. 1,536,274, issued May 4, 1925 (Filed June 27, 1923); O. C. Semonsen No. 1,536,275, issued May 5, 1925 (Filed June 27, 1923); A. R. Wolverton No. 1,524,328, issued January 27, 1925 (Filed June 11, 1923); and E. J. Post No. 1,401,728 issued December 27, 1921, proper copies of which are herewith attached and made a part hereof as defendant's Exhibits C, D, E, F, G, H, K, L and M respectively, and in view of the open and notorious use since time immemorial of frames for the holding of fabric to be embroidered, knitted or repaired, the claims
84 of the Reissue Letters Patent in suit, must be so construed as to exclude defendant's device and method of use from the scope thereof.

XVII.

Defendant, further answering, on information and belief, denies that there was any good and lawful cause for the reissue of said original patent; but on the contrary alleges that said original

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patent was not inoperative or invalid by reason of a defective or insufficient specification, or by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new, and moreover if there was any error in said original patent it did not arise from inadvertence, accident or mistake and without any fraudulent or deceptive intention, and this defendant further alleges that new matter was introduced into said specification.

XVIII.

86

Defendant admits that it is engaged in using only a needle for repairing runs in knitted fabrics manufactured under Letters Patent of the United States No. 1,674,508, issued to S. W. Finch under date of June 19, 1928, copy of which is attached hereto and made a part hereof and marked as defendant's Exhibit A. Defendant makes profert of one of the needles made under said patent to Finch which is brought here into court to be taken as part of this answer of defendant and marked for purposes of identification as defendant's Exhibit B.

87

Defendant avers that the method of use of the Finch Sliding Latch Needle as employed by defendant is only as follows:

> A method of repairing runs in hosiery consisting of the following steps: (1) Stretching a portion of the hose containing the run over a convenient holder, (2) inserting a repairing device having a hook and a sliding latch through a loop formed in the run, (3)

continuing the movement of the device through the fabric while holding the device laterally in alignment with the run until the loop has slid back over the point of the hook, up the beveled face of the sliding latch and into a cross-notch in the top of such latch, causing said latch to slide rearwardly in the device, (4) reversing the movement of the device causing the hook to catch the adjacent cross thread of the run, the loop lying in the cross-notch in the top of the sliding latch
89 causing such latch to slide toward the hook and the point of the hook to enter an opening in the beveled face of such latch and stop its forward movement, whereupon the loop slides out of the notch and over the hook, the thread lying in the hook forming a new loop, (5) repeating the downward and upward movements of the needle back and forth through the fabric until the run has been repaired to the point of the break in the hose.

Defendant denies that the said needle, or any part thereof, or its method of use, is an infringement on the Letters Patent issued to the plaintiff
90 and described in said bill of complaint.

XIX.

Defendant denies that plaintiff is entitled to any of the relief sought and prayed for in the bill of complaint; denies plaintiff's right to injunction, damages, profits, costs or accounting; or to have three-fold damages as prayed; and defendant

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prays to be hence dismissed with its costs in this behalf most wrongfully sustained.

HOSIERY MOTOR-MEND CORPORATION,
By J. R. HARBECK,
President.

ATTEST:
RITA C. CROSSIN,
Assistant Secretary.

WARREN S. ORTON,
Woolworth Building,
New York City, N. Y.
Solicitor for Defendant.

92

FREDERICK SCHAFER,
Washington Loan & Trust Building,
Washington, D. C.
Of Counsel for Defendant.

93

94 *Answer.*

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

J. R. HARBECK, being duly sworn, deposes and says that he is the President of Hosiery Motor-Mend Corporation, the defendant herein, that he has read the foregoing answer, and that the same is true to the best of his knowledge, except as to the matters therein stated to be on information and belief, and as to these matters he verily believes them to be true.

95

J. R. HARBECK.

Subscribed and sworn to before me this }
20 day of February, 1932. }

JUNIUS LEDERER,
Notary Public,
Bronx County.
Bronx County Clk's No 118, Reg. No. 2978
N Y Co Clk's No 323, Reg No 9282
(Seal)

96

Amended Bill of Complaint, Including Additional Defendants. 97

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, INCORPORATED, Plaintiff, vs. HOSIERY MOTOR-MEND CORPORATION, KAYSER HOSIERY MOTOR-MEND CORPORATION, JULIUS KAYSER & COMPANY, a Corporation, Defendants.	In Equity No. 48-16. 98

TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

Under and by virtue of an Order of this Court, signed on July 16, 1930, by Justice William Bondy, after argument on Petition and Motion of plaintiff, 99 participated in by counsel for plaintiff, original defendant, and the proposed additional defendants, the plaintiff was granted leave to "amend its Bill of Complaint herein to add as defendants the aforesaid Kayser Hosiery Motor-Mend Corporation and Julius Kayser & Company, without prejudice to said added defendants by reason of any proceedings heretofore had herein between the original parties; it being the intent of this Order, however, that the cause, as amended, shall retain its present place

100 *Amended Bill of Complaint, Including Additional Defendants:*

upon the trial calendar subject to the running of the time allowed said added defendants under the applicable Statutes & Rules."

This is a suit in equity arising under the patent laws of the United States.

I.

THE STELOS COMPANY, INC., a corporation organized and existing under the laws of the State
101 of Delaware, a resident of said State, and having its principal office in the District of Columbia, brings this Bill of Complaint against the HOSIERY MOTOR-MEND CORPORATION, incorporated under the laws of the State of Delaware, operating the Vanitas System and using the Finch Sliding Latch Needle, and having the following officers:

President, J. R. Harbeck,
Treasurer, L. M. Adams,

said corporation having its principal and established place of business at 40 East 34th Street, in the City and State of New York; The KAYSER HO-
102 SIERY MOTOR-MEND CORPORATION, incorporated on May 3rd, 1929, under the laws of the State of Delaware, operating the Vanitas System and using the Finch Sliding Latch Needle, and having the following officers:

President, Henry L. Van Praag, 353—4th Ave., New York City,
Treasurer, C. W. Sinn, 353—4th Ave., New York City,

Amended Bill of Complaint, Including Additional Defendants. 103

said corporation having its principal and established place of business at 353—4th Ave., in the City and State of New York; and JULIUS KAYSER & COMPANY, a corporation organized and existing under the laws of the State of New York, operating, through its controlled subsidiary (Kayser Hosiery Motor-Mend Corporation), the Vanitas System and using the Finch Sliding Latch Needle, and having the following officers:

President, Edwin S. Bayer, 104
Vice-President, Henry L. Van Praag,
Treasurer, Clarence W. Sinn,

said corporation having its principal and established place of business at 353—4th Ave., in the City and State of New York.

II.

Frank C. Stephens, a citizen of the United States, being prior to September 25, 1923, the original, first and sole inventor of a certain new and useful improvement in a NEEDLE and its METHOD OF USE, lawfully filed and prosecuted an application for 105 United States Letters Patent therefor, and having complied in all respects with the statute and rules of the United States Patent Office, Letters Patent No. 1564379 were granted December 8th, 1925.

That subsequent to the issuance of the aforesaid patent, to wit: on the 23rd day of March, 1926, said Frank C. Stephens and The Stelos Company, Inc., assignee, surrendered said Letters Patent and made application for its reissue, complying in all respects with the Statutes and Rules of the United

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States Patent Office pertaining thereto, and as a result reissue Letters Patent No. 16360 were granted on June 8th, 1926, a duly authenticated copy of said reissue patent being brought here into court to be taken as part of this Bill of Complaint.

Said invention of Frank C. Stephens was new, useful and not known or used by others in this country before his invention thereof, or patented or described in any printed publication anywhere before his invention thereof, or more than two years
107 prior to said application for United States patent therefor, or in public use or on sale in the United States for more than two years prior to said application, or patented in any foreign country by him or his legal representatives on an application filed more than one year before his said application filed in the United States Patent Office and said invention has never been abandoned.

III.

Said Letters Patent No. 1564379 and Reissue Letters Patent No. 16360, and the invention therein
108 set forth, were, by direct and mesne assignments transferred to the Stelos Company of America, Inc., and by that Company by an instrument in writing duly executed on the 5th day of November, 1927, to the plaintiff company, and is now the property of the plaintiff herein.

IV.

The invention set forth in said reissue patent No. 16360 dated June 8th, 1926, is of much value to plaintiff, and there is a large and rapidly increasing demand for same, which demand plaintiff has ample facilities for supplying.

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V.

Heretofore, to wit: on the 9th day of March, 1927, the Stelos Company of America, Inc., being then and there the owner of said Reissue Letters Patent No. 16360, and entitled to the benefit and protection thereof with respect to the invention claimed therein, filed its Bill of Complaint in equity in the U. S. District Court within and for the Western Division of the Western District of Missouri, against Evelyn Stark, having her principal office 110
and place of business in the City of Kansas City, Missouri, in a certain cause docketed in said court as Cause 795 in Equity, alleging an infringement by the said defendant in the said cause of said reissue Letters Patent No. 16360, by the manufacture, sale, and use of needles and by employing the method of use embodied and contained in said invention set forth and described and claimed in the said reissue Letters Patent No. 16360 aforesaid, and thereafter the said defendant answered the said Bill of Complaint in said suit and put in issue inter alia the validity of said U. S. reissue Patent and also the alleged infringement thereof, and the 111
said cause thereupon being at issue before the said court, the Hon. Merrill E. Otis, District Judge, then and there presiding, and the cause coming on to be heard upon the motion of the then plaintiff for an order of temporary injunction, and the then plaintiff appearing by counsel, and the defendant appearing in person and by counsel, and the Court having in open court heard the affidavits, evidence and arguments of counsel for the plaintiff and defendant, and having witnessed demonstrations of the operation as set forth in the patent in suit, and

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having been fully advised in the premises, did, on June 9th, 1927, order that until the further order of the Court, the defendant, her agents, servants, employees, and all persons working in concert or cooperation with her, be enjoined from in any way infringing upon reissue Letters Patent No. 16360, dated June 8th, 1926, and then the property of the Stelos Company of America, Inc., and now the property of the plaintiff herein, the said Letters Patent relating to an improvement in a needle and
113 its method of use, a duly authenticated copy of which order of temporary injunction is ready in court to be produced and to be taken as part of this Bill of Complaint, and this cause having come on to be heard further, and the Court having heard the evidence and arguments of counsel, and having been fully advised in the premises, ordered, adjudged, and decreed that the reissue Letters Patent No. 16360, granted on June 8, 1926, are good and valid, and that the defendant had infringed and violated said Letters Patent, and that the preliminary injunction issued be and the same was made final on the 10th day of October, 1927, a duly authenti-
114 cated copy of which final decree is ready in court to be produced and to be taken as part of this Bill of Complaint.

VI.

Heretofore, to wit, on the 23rd day of November, 1927, the Stelos Company, Inc., being there and then the owner of said Reissue Letters Patent No. 16360, and entitled to the benefit and protection thereof with respect to the invention therein claimed, filed its Bill of Complaint in equity in

Amended Bill of Complaint, Including Additional Defendants.

the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, against the May Department Store Company, trading as Famous-Barr Company, and Green-Jac Sales Company, the said Green-Jac Sales Company having its principal office and place of business in the City of St. Louis, State of Missouri, in a certain cause docketed in said court as No. 8070 in Equity, alleging an infringement by said Green-Jac Sales Company in the said cause of said reissue Letters Patent No. 16360, by the manufacture, sale and use of needles and by employing the method of use embodied and contained in said invention set forth and described and claimed in the said reissue Letters Patent No. 16360 as aforesaid, and thereafter the said defendant, Green-Jac Sales Company, after due service of process, having failed to answer said Bill of Complaint, and the said cause being then before the Court on the Bill of Complaint of the plaintiff, and the then plaintiff appearing by counsel, and representing to the Court that the then plaintiff was the sole and exclusive owner of reissue Letters Patent No. 16360, of the United States, dated the 8th day of June, 1926, for improvement in needle and its method of use, and that the plaintiff was also owner of all rights to recover damages and profits from all infringers of said letters patent, that said letters patent were good and valid, and had been infringed by the said Green-Jac Sales Company by the manufacture, use, or sale of needles embodying said invention or by practicing the method defined and set forth in Claim 23 of said letters patent, the Court thereupon, on the 21st day of December, 1927, ordered, adjudged and decreed that the said Green-Jac Sales

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Company, its officers, agents, attorneys, servants, employees and workmen, be commanded and enjoined for the remainder of the term of the life of said letters patent from making, using, or vending in any form or manner, directly or indirectly, the needle and the method of use set forth and defined in said letters patent, and from further offering for sale or advertising said needles or method of use, or aiding or abetting or in any way contributing to infringement of said letters patent, or granting
119 to any person or persons any so-called right or privilege to use said needle or any needle made in similitude thereof, or the method described and set forth in said letters patent, and from in any manner infringing or violating any of the rights or privileges granted or secured to plaintiff by said letters patent; a duly authenticated copy of which decree is ready in court to be produced and to be taken as part of this Bill of Complaint.

VII.

Plaintiff further shows that it has been the policy
120 of its predecessors to grant franchises and leases both for the use of the articles patented and the method of repairing runs in knitted goods, as hosiery. Among those to whom franchises and leases for certain centers and territory have been granted are the following:

Joseph Horne Co.,	Pittsburgh, Pa.
J. L. Hudson Co.,	Detroit, Mich.
Cleveland Stelos Co.,	Cleveland, Ohio
Southern Stelos Co.,	Washington, D. C.
California Stelos Co.,	San Francisco, Cal.

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Mend-A-Run,	Kansas City, Mo.
L. S. Ayres & Co.,	Indianapolis, Ind.
The McAlpin Co.,	Cincinnati, Ohio
The Eastern Stelos Co.,	Philadelphia, Penna.
M. Rich & Bros. Co.,	Atlanta, Georgia
Binghamton Stelos Co.,	Binghamton, N. Y.
Jordan-Marsh Co.,	Boston, Mass.
The Hennessy Co.,	Butte, Montana
Sanger Bros.,	Dallas, Texas
Linn & Scruggs,	Decatur, Illinois
Eastern Stelos Co.,	Eastern Part of Penna.
Louisville Stelos Co.	Louisville, Kentucky
New Haven Stelos Co.,	New Haven, Conn.
J. L. Brandeis & Sons,	Omaha, Nebraska
Maas Brothers, Inc.—	Tampa, Fla.
The Utica Stelos Co.,	Utica, N. Y.
C. Thomas Kemp,	Frederick, Md.
Miller & Rhoads,	Richmond, Va.
The Meyer's Co.,	Greensboro, N. C.
Frederick & Nelson,	Seattle, Wash.
Chicago Stelos Co.,	Chicago, Ill.

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VIII.

The plaintiff is informed and believes, and therefore avers that the defendant (Hosiery Motor-Mend Corporation) has been, after the issuance of said Letters Patent, and before the commencement of this suit, and still is, within the said State of New York, and elsewhere in the United States, infringing plaintiff's exclusive rights granted by said

124 patent, either by making, using or selling said needles and/or operating needles according to the teachings of said patent, or by contributing to the infringement by instructing the purchasers and users of needles to use the same in accordance with the teachings of the method set forth in the patent in suit, and more particularly Claim 23 of said patent to the method of operation of the needle.

VIII-A.

125 Plaintiff shows the Court that on, to wit, May 3, 1929, the defendant, Kayser Hosiery Motor-Mend Corporation, was incorporated under the laws of the State of Delaware, which said corporation, plaintiff is informed and believes, and therefore avers, is merely a reorganization of the defendant, Hosiery Motor-Mend Corporation, and is a subsidiary of and controlled by the defendant, Julius Kayser & Company; and that on, to wit, May 16, 1929, an assignment of the entire right, title and interest in and to the inventions, applications, further improvements, trade mark and goodwill, and other rights owned by said Hosiery Motor-Mend Corpora-
126 tion was executed by said Hosiery Motor-Mend Corporation to the Kayser Hosiery Motor-Mend Corporation, its successors, assigns or legal representatives, which said assignment was recorded on May 24, 1929, in "Transfers of Patents", U. S. Patent Office, in liber L-139, Page 547, a duly authenticated copy of which assignment is ready in Court to be produced and to be taken as part of this Amended Bill of Complaint. Plaintiff is informed and believes, and therefore avers that the defendants, Kayser Hosiery Motor-Mend Corporation and Julius Kayser & Company have been, after

the issuance of said letters Patent, and since approximately four months after the institution of this action against the Hosiery Motor-Mend Corporation, and with full knowledge thereof, and still are, within the Borough of Manhattan, and elsewhere in the City and State of New York and throughout the United States, infringing plaintiff's exclusive rights granted by said patent, either by making, using or selling said needles and/or operating needles according to the teachings of said patent, or by contributing to the infringement by instructing the purchasers and users of needles to use the same in accordance with the teachings of the method set forth in the patent in suit, and more particularly Claim 23 of said patent to the method of operation of the needle.

IX.

That since the grant of said reissue Letters Patent No. 16,360, dated June 8th, 1926, the owners thereof have marked or caused to be marked the needles embodying the invention and improvements of said Letters Patent, and also the boxes containing the needles, which have been made, sold or used by the plaintiff, or under its authority, by affixing thereon the word "Patented", together with the patent number and the day and year on which said Letters Patent were granted.

X.

Defendants have been duly notified in writing of their infringement, but defendants are continuing to make, use and sell needles and employ the method of operation, and by their printed litera-

130 ture, demonstrations, and otherwise, to teach purchasers of the needles to use them in exact accordance with the teachings of reissue Letters Patent No. 16360 in suit, and more particularly the method set forth in Claim 23 of said patent, and in violation of plaintiff's rights and in infringement of said Letters Patent, whereby plaintiff has been greatly and irreparably damaged, and whereby defendants have obtained and are obtaining large profits which in equity belong to plaintiff, the amount of which
131 damages and profits plaintiff cannot ascertain except by an accounting.

WHEREFORE PLAINTIFF PRAYS:

(a) That Defendants be required to answer Amended Bill of Complaint, but not under oath, answer under oath being expressly waived.

(b) That the Court grant a preliminary injunction pending this suit, and an order to show cause why such a preliminary injunction should not be granted pending this suit, and a perpetual injunction restraining these defendants, their agents, employees and confederates from making, using or
132 vending the needle and the method of use set forth and defined in said Letters Patent, and from offering or advertising or in aiding or abetting or in any way contributing to the infringement of said Letters Patent.

(c) That this case be referred to a Master, and an accounting be taken of the profits received by defendants, and that the damages be increased three-fold, and that the plaintiff have judgment for such damages and profits and for the costs of this suit.

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(d) That subpoenas ad respondendum issue directed to the said defendants.

(e) That Plaintiff have such other and further relief as equity may require.

THE STELOS COMPANY, INC.,
By FRANK C. STEPHENS,
Vice-President.

(Seal)

ATTEST:
RUTH HARVEY,
Secretary. 134

VERNON E. HODGES,
639 F. Street, N. W.,
Washington, D. C.

HENRY GILLIGAN,
Otis Building,
Washington, D. C.
Counsel for Plaintiff.

DANIEL BURKE,
Solicitor.

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DISTRICT OF COLUMBIA, ss.:

On the 25th day of July, 1930, at Washington, District of Columbia, before me Effie C. Ryon, a Notary Public, personally appeared Frank C. Stephens, who being first duly sworn, did depose and say that he is the Vice-President of The Stelos Company, Inc., the plaintiff named in the foregoing Amended Bill of Complaint; that he signed the same as such officer; that he has read the said Bill
137 subscribed by him and knows the contents thereof, and that the same is true of his own knowledge except as to matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

FRANK C. STEPHENS,

(Seal)

Witness my hand and Notarial Seal.

EFFIE C. RYON,
Notary Public, D. C.

My Commission will expire January 4th, 1931.

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Answer of Additional Defendant, Kayser Hosiery Motor-Mend Corporation. 139

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, INCORPORATED,
Plaintiff,

v.

HOSIERY MOTOR-MEND CORPORATION, KAYSER HOSIERY MOTOR-MEND CORPORATION, JULIUS KAYSER & COMPANY, a Corporation,
Defendants.

In Equity No. 48-16. 140

TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK:

The above named additional defendant, Kayser Hosiery Motor-Mend Corporation, for answer to the amended bill of complaint, or so much thereof as is material to be answered says: 141

I.

Defendant has no knowledge as to whether plaintiff is a corporation organized and existing under the laws of the State of Delaware, a resident of said State, and having its principal office in the District of Columbia, and therefore denies same.

Defendant, Kayser Hosiery Motor-Mend Corporation, admits that it is a corporation organized and existing under the laws of the State of Dela-

142 *Answer of Additional Defendant, Kayser Hosiery Motor-Mend Corporation.*

ware having a regular and established place of business at 40 East 34th Street, in the City and State of New York.

Defendant, on information and belief, denies the other allegations of paragraph 1 of the bill of complaint, except that it is informed and believes that Hosiery Motor-Mend Corporation was incorporated under the laws of the State of Delaware.

II.

143 Defendant, admits that on December 8, 1925, Letters Patent No. 1,564,379 were issued by the United States Patent Office; and that on June 8, 1926 Reissue Letters Patent No. 16,360 were issued by the United States Patent Office for the remainder of the term of said original Letters Patent No. 1,564,379, but defendant otherwise denies the allegations of paragraph II of the Bill of Complaint, and specifically avers that said Reissue Letters Patent No. 16,360 as to each and every claim thereof is invalid and was issued without authority of law and contrary to the provisions of the patent statutes in such cases made and provided.

144 Defendant denies that the said alleged invention of Frank C. Stephens was new, useful and not known or used by others in this country before his invention thereof, or patented or described in any printed publication anywhere before his invention thereof, or more than two years prior to said application for United States patent therefor, or in public use or on sale in the United States for more than two years prior to said application, or patented in any foreign country by him or his legal representatives on an application filed more than one year before his said application filed in the

Answer of Additional Defendant, Kayser Hosiery Motor-Mend Corporation. 145

United States Patent Office and that said invention had never been abandoned.

III.

Defendant has no knowledge as to the assignments referred to in paragraph III of the Bill of Complaint, and therefore denies same.

IV.

Defendant denies the allegations of paragraph 146
IV of the Bill of Complaint.

V.

Defendant has no knowledge as to the allegations of paragraph V of the Bill of Complaint, and therefore denies same, but states that it was not privy or party to the suit therein alleged, is not bound thereby, and that the Court in decreeing as alleged for plaintiff was not fully advised in the premises.

VI. 147

Defendant has no knowledge as to the allegations of paragraph VI of the Bill of Complaint, and therefore denies same, but states that it was not privy or party to the suit therein alleged, is not bound thereby, and that the Court in decreeing as alleged for plaintiff was not fully advised in the premises.

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VII.

Defendant has no knowledge as to the allegations of paragraph VII of the amended bill of complaint, and therefore denies same, but on information and belief, defendant avers that some or all of the leases and franchises alleged if granted, were to subsidiary or controlled parties, or have been terminated or abandoned, or have been given for nominal or no consideration, and where given and exercised, re-
149 late to a Stelos Hand Magnetic System and are irrelevant and immaterial to the machine of defendant herein complained of.

VIII.

Defendant on information and belief, denies the allegations of paragraph VIII of the bill of complaint.

IX.

Defendant denies the allegations of paragraph VIII-A of the bill of complaint except that on in-
150 formation and belief it admits that Kayser Hosiery Motor-Mend Corporation was incorporated under the laws of the State of Delaware on May 3, 1929; and that on May 16, 1929 an assignment was executed by said Hosiery Motor-Mend Corporation to said Kayser Hosiery Motor-Mend Corporation which assignment was recorded on May 24, 1929 in Liber L. 139, page 547 in Transfers of Patents of the United States Patent Office.

Answer of Additional Defendant, Kayser Hosiery Motor-Mend Corporation. 151

X.

Defendant has no knowledge as to the allegations of paragraph IX of the Bill of Complaint and therefore denies same.

XI.

Defendant on information and belief denies the allegations of paragraph X of the Complaint.

XII. 152

Defendant on knowledge, information and belief says that for many years prior to the year 1920, it has been the common, ordinary, and well known method of employing pivoted latch hook needles to repair runs in hosiery and other knitted goods by reciprocating the instrument in the run while stretching the article being repaired over a holder and holding the repairing needle laterally out of alignment with the run, or in alignment with the run, or at times in alignment with the run and at times out of alignment with the run as the convenience of the operator determines; and defendant further says that there is not now and never 153 was, any invention or novel functional utility in using a holder over which to stretch the goods in the manner well known for many years in knitting, darning, crocheting, rug-hooking and analogous arts, nor invention or utility in holding the needle more or less in or laterally out of alignment with the run, but that said alleged method has been known and used for many years since prior to the year 1920, and is a common and well known method used in mills making tubular and flat knit goods

154 in the repair of runs on the machine by machine operators and in the repair of runs off the machine by machine operators and members and other persons employed for many years to do that work for the purpose of salvaging the goods; and by the users of hand knitting machines in homes or other places for repairing runs occurring in ordinary use of knitted goods and in the manufacture of knitted goods by such hand machines.

Defendant further avers that the alleged method
155 of claim 23 of the patent in suit was not a patentable method in the sense of the patent law, but is merely for the common and well known function of the pivoted latch hook needle known to the knitting art for at least sixty years.

Defendant further avers, on information and belief, that the said Stephens and/or his agents and legal representatives inaccurately and incompletely represented the state of the art to the Patent Office; whereby the Patent Office unlawfully granted the method claim in the original Patent No. 1,564,379 and in the Re-Issue Patent in suit No. 16,360 which was neither new nor original with the said Stephens at the date of his alleged invention thereof,
156 because known and used and openly described and practiced by many others long prior to the alleged date of said invention of said method by Stephens.

XIII.

Defendant charges and alleges:

(a) That said Reissue Letters Patent in suit No. 16,360 and each and every part and claim thereof, is void and of no effect in law because the alleged invention and method asserted to be therein de-

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scribed, discovered and claimed had been, long prior to the alleged invention or discovery thereof by the said Frank C. Stephens, or more than two years prior to the alleged date of the application for said patent, patented, described, and fully disclosed to the public in various patents and other printed publications in the United States and foreign countries.

(b) That said Frank C. Stephens was not the original, first or true inventor or discoverer thereof, or of any material or substantial part of the alleged method, process or apparatus claimed to be patented therein, but that the same had been in public use and on sale in this country for more than two years prior to his application for said patent, and that the several parts thereof had been invented, discovered, known to, patented and described in printed publications, and foreign and United States patents, and used by others in this country, and elsewhere, before the alleged invention or discovery or appropriation thereof by the said Frank C. Stephens.

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(c) That what is described and claimed in said patent was old and well known prior to the alleged invention of the said Frank C. Stephens, and did not, in view of the prior art, involve patentable invention.

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(d) That the method, process and apparatus claimed in said patent in suit had, prior to the alleged date of invention of this patent, been abandoned to the public.

The following Letters Patent of the United States and foreign countries granted and/or printed prior

160 *Answer of Additional Defendant, Kayser Hosiery Motor-Mend Corporation.*

to the alleged filing date of said Stephens are among those supporting these defenses, and to which defendant makes reference and gives notice, to wit:

UNITED STATES PATENTS.

Name	*Number*	*Date*
Hilbert	6,025	Jan. 9, 1849
Carey	47,488	Apr. 25, 1865
Fifield	51,577	Dec. 19, 1865
Miller	71,039	Nov. 19, 1867
161 Arnold	86,121	Jan. 26, 1869
Arnold	86,122	Jan. 26, 1869
Arnold	93,394	Aug. 10, 1869
Bickford	132,382	Oct. 22, 1872
Curtiss	152,466	June 30, 1874
Appleton	169,943	Nov. 16, 1875
Salisbury	189,500	Apr. 10, 1877
Salisbury	189,501	Apr. 10, 1877
Jones	386,636	July 24, 1888
Goodman	400,330	Mar. 26, 1889
Merrow	415,310	Nov. 19, 1889
Egly	473,697	Apr. 26, 1892
Boyer	648,722	May 1, 1900
162 Wickham	677,832	July 2, 1901
Egly	773,722	Nov. 1, 1904
Fife	935,841	Oct. 5, 1909
Egly	956,318	Apr. 26, 1910
Scott	1,097,732	May 26, 1914
Ceska	1,337,884	Apr. 20, 1920
Fenn	1,364,088	Jan. 4, 1921
Post	1,401,728	Dec. 27, 1921
Wolverton	1,524,328	Jan. 27, 1925
Semonsen	1,536,274	May 5, 1925
Semonsen	1,536,275	May 5, 1925

Answer of Additional Defendant, Kayser Hosiery Motor-Mend Corporation.

CANADIAN PATENT.

Name	*Number*	*Date*
Ortega	225,612	Nov. 7, 1922

BRITISH PATENTS.

Jaecock	965/1856	Apr. 22, 1856
Schwarzbach	3,774/80	Mar. 17, 1881
Lee, et al.	24,311/93	Dec. 18, 1893
Walker	19,115/03	Sept. 5, 1903
Pogson	168,817	Jan. 18, 1921
Ortega	180,730	Feb. 21, 1921

GERMAN PATENTS.

Schwarzbach	15,876	Aug. 22, 1880
Hartig	106,861	Mar. 28, 1899
Kleemann	359,064	Jan. 26, 1921
Kleemann	361,782	Aug. 18, 1921

PRINTED PUBLICATIONS:

The Letters Patent hereinbefore recited:

British Patent to Jaecock No. 965/1856
Sealed Sept. 12, 1856.

British Patent to Schwarzbach No. 3774/80
Filed March 17, 1881.

British Patent to Lee, et al. No. 24,311/93
Accepted Oct. 13, 1894.

British Patent to Walker, No. 19,115/1903
Accepted May 5, 1904.

British Patent to Pogson, No. 168,817
Accepted Sept. 15, 1921.

British Patent to Ortega, No. 180,730
Accepted May 23, 1922.

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German Patent to Schwarzbach, No. 15,876
Published on or about Nov. 28, 1881.
German Patent to Hartig, No. 106,861
Published on or about Dec. 19, 1899.
German Patent to Kleemann, No. 359,064
Published on or about Sept. 16, 1922.
German Patent to Kleemann, No. 361,782
Published on or about Oct. 19, 1922.
Printed instructions for operating Gearhart's Knitting Machine, Copyrighted 1920 by
167 Gearhart Knitting Machine Company, Clearfield, Pa., published in 1920. New Edition, Nov. 1, 1921.
Printed Instructions for the new Branson Knitting Machine, page 23, Published by J. E. Branson, 505 Chestnut Street, Philadelphia, Penna., prior to 1912.
Book of Instructions for using the People's H. S. Knitting Machine, page 6, Published by Cardon & Gearhart, Dundas, Ontario, Canada, prior to 1912.
Book of Instructions for using the People's H. S. Knitting Machine, page 6, Published
168 by J. E. Gearhart, Clearfield, Pa., 1894.
Instructions for using Gearhart's Improved Family Knitting Machine, Published by J. E. Gearhart, Clearfield, Pa., 1896.
Instructions for using Gearhart's Improved Family Knitting Machine, Published by J. E. Gearhart & Son, Clearfield, Pa., page 11, prior to 1898.
Instructions for using Gearhart's Family Knitting Machine, published by Gearhart Knitting Machine Co., Clearfield, Pa., in English, Swedish, Norwegian, German and Polish, 1913-1914.

Answer of Additional Defendant, Kayser Hosiery Motor-Mend Corporation.

Instructions for Operating the Celebrated Auto-Knitter, Model B, published by Auto-Knitter Hosiery Co., Buffalo, U. S. A., Leicester, England, Toronto, Canada, 1920, pages 16 and 36.

Instructions for Operating Gearhart's Knitting Machine, published by Gearhart Knitting Machine Co., Inc., Clearfield, Pa., pages 10-16, 1920.

Instructions for Operating Gearhart's Knitting Machine, published by Gearhart Knitting Machine Co., Inc., Clearfield, Pa., pages 10-16, March 1921.

Instructions for Operating Gearhart's Knitting Machine, published by Gearhart Knitting Machine Co., Inc., Clearfield, Pa., pages 10-16, November 1921.

The Auto Knitter Instruction Book, 16th Edition, published by Auto Knitter Hosiery Co., Buffalo, N. Y., Toronto, Can., copyrighted 1920 U. S. A., Canada, and England, pages 1, 20, and 36.

Instructions for Operating the Gearhart Sock Knitting Machine, Copyrighted 1918, by Miss Ada Wiener, Boston, Mass., page 20.

Instructions for Operating Gearhart's Knitting Machine Special Work and Family Outfit, published by Gearhart Knitting Machine Co., Clearfield, Pa., June, 1918.

Instruction Book for the Celebrated Auto-Knitter Ribber Knitting Machine, Eighth Edition, Canadian Copyright registered in Folio 31083, of Register of Copyrights No. 108, in name of William Alexander Griffith, on Dec. 13, 1915, Assignment of said Copy-

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right by William Alexander Griffith to Auto-Knitter Hosiery, (Canada) Company, Limited, dated Oct. 25, 1916.

The Auto Knitter Instruction Book, 12th Edition, by Oscar F. K. Kunau, published Sept. 20, 1918 by Auto Knitter Hosiery Co., Inc., U. S. A. Copyright registered Oct. 18, 1918, Class A, XXc., No. 507,097.

The Auto Knitter Instruction Book, 14th Edition, by Oscar F. C. Kunau, published Sept.
173 20, 1918 by Auto Knitter Hosiery Co. Inc., U. S. A. Copyright registered Oct. 18, 1918, Class A, XXc., No. 507,098.

The Auto Knitter Instruction Book, 15th Edition, Copyright 1919 by Auto Knitter Hosiery Co., Inc.; Auto Knitter Hosiery Co., Ltd., Auto Knitter Hosiery (Canada) Co., Ltd.

The Auto Knitter Instruction Book, 18th Edition, Copyrighted 1922 by The Auto Knitter Hosiery Co., Inc., Buffalo, N. Y.

XIV.

174 Defendants aver that the things patented in said Reissue Patent No. 16,360 had been known prior to the alleged invention or discovery by the said Frank C. Stephens or more than two years prior to his application for patent No. 1,564,379 and the Reissue patent in suit, and every material and substantial part of said alleged invention claimed as new in the patent in suit had been known and also publicly used by others in this country prior to the alleged invention or discovery by the said Stephens or more than two years prior to his ap-

plication for patent No. 1,564,379 by the following concerns and persons:

Phoenix Knitting Mills Co., Milwaukee, Wisconsin,
Edward E. Busek " "
J. C. Ruedt " "
May Delebeck " "
Mrs. Helen Luell " "
Mrs. Marjorie Converse " "
Vernon Craft " "
Phoenix Hosiery Co. " "
Gearhart Knitting Machine Company, and its predecessors and successors of and at Clearfield, Pa., 176
E. J. Gearhart, Clearfield, Pa.
John R. Gearhart " "
Roy G. Shaw " "
Ada Wiener, Boston, Mass.
Sterling Mack, Bangor, Pa.
Berdie King, Nazareth, Pa.
Calvin H. Hartzell, Nazareth, Pa.
Auto Knitter Hosiery Co., Inc., Buffalo, N. Y.

and many others not now known to defendants, but which they pray leave to insert when discovered. 177

Defendant, further answering, avers that the alleged invention patented in and by said Reissue Patent and particularly as pointed out in Claim 23 thereof, in view of the prior state of the art at the time that the same was alleged to be made and as known and practiced in this country by the various persons and at the various places hereinbefore mentioned, did not constitute a patentable improvement or invention within the meaning of the patent law; that said Letters Patent and

178 *Answer of Additional Defendant, Kayser Hosiery Motor-Mend Corporation.*

particularly claim 23 thereof did not describe or claim legally patentable subject matter, invention, or discovery and that said alleged improvement required for its production only the ordinary skill and knowledge, such as was possessed generally by workers in the art to which said Letters Patent pertains; wherefore, as the defendants are advised, said Letters Patent and each and every of the claims thereof, and particularly claim 23 thereof, are void and of no effect in law.

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XV.

Defendants, further answering, aver that the matter covered by claim 23 of said Reissue Patent is not a statutory subject of patent; that it defines no patentable invention; that the Commissioner of Patents exceeded his authority in granting said patent on a defective and incomplete disclosure; and that the alleged method defined in Claim 23 is not a patentable art or method in that it depends for its execution upon certain specific mechanical instrumentalities or particular hand manipulations not subject to the patent laws.

180

XVI.

Defendant avers that in view of the state of the art as it existed at and prior to the time of the said alleged invention by the said Stephens, and as evidenced by the patents, publications and knowledge hereinbefore referred to, and in view of the open and notorious use since time immemorial of frames and recessed holders fabric to be embroidered, knitted or repaired by hand, the claims of the Reissue Letters Patent in suit, must be so construed

as to exclude defendant's device and method of use from the scope thereof.

XVII.

Defendant, further answering, on information and belief, denies that there was any good and lawful cause for the reissue of said original patent; but on the contrary alleges that said original patent was not inoperative or invalid by reason of a defective or insufficient specification, or by reason of the patentee claiming as his own invention or discovery, more than he had a right to claim as new, and moreover, if there was any error in said original patent it did not arise from inadvertence, accident or mistake and without any fraudulent or deceptive intention, and defendant further alleges that new matter was introduced into said specification.

XVIII.

Defendant avers that the machine complained of is a power driven machine substantially as described and claimed in U. S. Letters Patent No. 1,745,462, issued Feb. 4, 1930, on application of William D. Van Dyke and assigned to defendant, Kayser Hosiery Motor-Mend Corporation; that the function of such machine is not patentable; and that the needle used therewith is of the sliding latch type covered by United States Letters Patent No. 1,674,508, issued June 19, 1928 to Finch Corporation, under which defendant, Kayser Hosiery Motor-Mend Corporation, is exclusive licensee, which said sliding latch type needle is different from and not an equivalent of the pivoted latch type needle described and specifically claimed in claim 23 of the patent in suit and patented, known

184 *Answer of Additional Defendant, Kayser Hosiery Motor-Mend Corporation.*

to and used by the knitting, rug hooking and darning arts, and similar repair arts for many years prior to the year 1920; and defendant further says that its said machine embodies improvements according to various pending applications for Letters Patent of the United States owned by defendant or licensed to it; all of said improvements complained of not in any way, shape or form being based upon anything novel or original with the said Stephens, or set forth, disclosed or claimed in the said patent,
185 and particularly claim 23; but novel and original with the assignors of defendant, and not equivalent to anything lawfully claimed by the said Stephens; and that if said claim 23 be construed to cover the use of defendant's needle and/or machine, it is void as being for a function; wherefore defendant denies that the machine or needle or method complained of, or its manner of use, is an infringement of the Letters Patent in suit.

XIX.

Defendant denies that plaintiff is entitled to any of the relief sought and prayed for in the Bill of
186 Complaint; denies plaintiff's right to injunction, damages, profits, costs or accounting; or to have three-fold damages as prayed; and defendant prays to be hence dismissed with its costs in this behalf most wrongfully sustained.

KAYSER HOSIERY MOTOR-MEND CORP.,
By JULIAN S. WOOSTER,
Solicitor for Defendants,
Office and P. O. Address,
233 Broadway,
New York City.

N. Y., August 14, 1930.

Answer of Additional Defendant, Julius Kayser & Company.

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DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, INCORPORATED, Plaintiff, against HOSIERY MOTOR-MEND CORPORATION, KAYSER HOSIERY MOTOR-MEND CORPORATION, JULIUS KAYSER & COMPANY, a Corporation, Defendants.	In Equity No. 48-16.

188

TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK:

The above named defendant, Julius Kayser & Company, for answer to the amended bill of complaint, or to so much thereof as is material to be answered, says:

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I. Defendant has no knowledge as to the incorporation, residence, and principal office of plaintiff, and therefore denies same.

Defendant, Julius Kayser & Company, says that it is a corporation organized and existing under the laws of the State of New York and has its principal place of business at 353 Fourth Avenue, in the City and State of New York.

Defendant, on information and belief, denies the other allegations of paragraph 1 of the bill of com-

190 *Answer of Additional Defendant, Julius Kayser & Company.*

plaint, except that it admits on information and belief that Hosiery Motor-Mend Corporation was incorporated under the laws of the State of Delaware.

II. Defendant admits that on December 8, 1925, Letters Patent No. 1,564,379 were issued by the United States Patent Office; and that on June 8, 1926 Reissue Letters Patent No. 16,360 were issued by the United States Patent Office for the re-
191 mainder of the term of said original Letters Patent No. 1,564,379, but defendant denies the other allegations of paragraph II of the Bill of Complaint.

Defendant, on information and belief, denies that the said alleged invention of Frank C. Stephens was new, useful and not known or used by others in this country before his invention or discovery thereof, or patented or described in any printed publication in any country before his invention thereof, or more than two years prior to his said application for United States patent, or in public use or on sale in the United States for more than two years prior to said application, or patented in any foreign
192 country by him or his legal representatives on an application filed more than one year before his said application filed in the United States Patent Office, and that said invention had not been abandoned.

III. Defendant has no knowledge as to the assignments referred to in paragraph III of the Bill of Complaint, and therefore denies same.

IV. Defendant denies the allegations of paragraph IV of the Bill of Complaint.

Answer of Additional Defendant, Julius Kayser & Company.

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V. Defendant has no knowledge as to the allegations of paragraph V of the Bill of Complaint, and therefore denies same, but avers that it was not a party or privy to the suit therein alleged, is not bound thereby, and that the Court in decreeing for plaintiff herein as alleged, was not fully advised as to the true state of the art.

VI. Defendant has no knowledge as to the allegations of paragraph VI of the Bill of Complaint, and therefore denies same, but on knowledge, information and belief avers that it was not a party or privy to the alleged suit, is not bound thereby, and that the Court in decreeing for plaintiff as alleged, was not fully advised as to the true state of the art.

194

VII. Defendant has no knowledge as to the policy alleged by plaintiff in paragraph VII of the amended bill of complaint, nor of the franchises and leases therein alleged, and therefore denies same, but on information and belief, defendant avers that some or all of the leases and franchises alleged, if granted, were to subsidiary or controlled parties, or have been terminated, or have been given for nominal or no consideration, and where given and exercised relate to a Stelos Hand Magnetic System or Method and are irrelevant and immaterial to the acts herein complained of.

195

VIII. Defendant on information and belief, denies the allegations of paragraph VIII of the Bill of Complaint.

IX. Defendant denies the allegations of paragraph VIII-A of the Bill of Complaint except that

196 *Answer of Additional Defendant, Julius Kayser & Company.*

on information and belief it admits that Kayser Hosiery Motor-Mend Corporation was incorporated under the laws of the State of Delaware on May 3, 1929; and that on May 16, 1929, an assignment was executed by said Hosiery Motor-Mend Corporation to said Kayser Hosiery Motor-Mend Corporation which assignment was recorded on May 24, 1929 in Liber L. 139, page 547 in Transfers of Patents of the United States Patent Office.

197 X. Defendant has no knowledge as to the allegations of paragraph IX of the Bill of Complaint and therefore denies same.

XI. Defendant, on information and belief, denies the allegations of paragraph X of the Bill of Complaint.

XII. Defendant on knowledge, information and belief says that for many years prior to the year 1920, it has been the common, ordinary, and well known method of employing pivoted latch hook needles to repair runs in hosiery and other knitted goods in its own and other mills by reciprocating
198 the instrument in the run while stretching the article being repaired over a holder and holding the repairing needle laterally out of alignment with the run, or in alignment with the run, or at times in alignment with the run and at times out of alignment with the run as the convenience of the operator determined; and defendant further says that there is not now and never was, any invention or novel functional utility in using a holder over which to stretch the goods in the manner well known for many years in knitting, darning, crocheting, rug-

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hooking and analogous arts, nor invention or utility in holding the needle more or less in or laterally out of alignment with the run, but that said alleged method has been known and used for many years since prior to the year 1920, and is a common and well known method used by machine operators in mills making tubular and flat knit goods in the repair of runs without taking the goods off the machine, and in the repair of runs with the goods off the machine by machine operators, menders, and other persons employed to do that work for the 200
purpose of salvaging the goods; and by the users of hand knitting machines in homes or other places for repairing runs occurring in ordinary use of knitted goods and in the manufacture of knitted goods by such hand machines.

Defendant further avers that the alleged method of claim 23 of the patent in suit was not a patentable method in the sense of the patent law, but is merely for the common and well known function of the pivoted latch hook needle known to the knitting art for at least sixty years.

Defendant further avers, on information and belief, that the said Stephens and/or his agents 201
and legal representatives inaccurately and incompletely represented the state of the art to the Patent Office; whereby the Patent Office was misled and unlawfully granted the method claim in the original Patent No. 1,564,379 and in the Re-Issue Patent in suit No. 16,360, which was neither new nor original with the said Stephens at the date of his alleged invention thereof, because known and used and openly described and practiced by many others long prior to the alleged date of said invention of said method by Stephens.

202 *Answer of Additional Defendant, Julius Kayser & Company.*

XIII. Defendant charges and alleges:

(a) That said Reissue Letters Patent in suit No. 16,360, is void and of no effect in law because the alleged invention and method asserted to be therein described, discovered and claimed had been, long prior to the alleged invention or discovery thereof by the said Frank C. Stephens, or more than two (2) years prior to the alleged date of the application for said patent, patented, described, and fully disclosed to the public in various patents and other
203 printed publications in the United States and foreign countries.

(b) That said Frank C. Stephens was not the original, first or true inventor or discoverer thereof, or of any material or substantial part of the alleged method, process or apparatus claimed to be patented therein, but that the same had been in public use and on sale in this country for more than two (2) years prior to his application for said patent, and that the several parts thereof had been invented, discovered, known to, patented and described in printed publications, and foreign and
204 United States patents, and used by others in this country, and elsewhere, before the alleged invention or discovery or appropriation thereof by the said Frank C. Stephens.

(c) That what is described and claimed in said patent was old and well known prior to the alleged invention of the said Frank C. Stephens, and did not, in view of the prior art, involve patentable invention.

(d) That the method, process and apparatus claimed in said patent in suit had, prior to the

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alleged date of invention of this patent, been abandoned to the public.

The following Letters Patent of the United States and Foreign countries granted and/or printed prior to the alleged filing date of said Stephens are among those supporting these defenses, and to which defendant makes reference and gives notice, to wit:

UNITED STATES PATENTS.

206

Name	*Number*	*Date*
Hilbert	6,025	Jan. 9, 1849
Carey	47,488	Apr. 25, 1865
Fifield	51,577	Dec. 19, 1865
Miller	71,039	Nov. 19, 1867
Arnold	86,121	Jan. 26, 1869
Arnold	86,122	Jan. 26, 1869
Arnold	93,394	Aug. 10, 1869
Bickford	132,382	Oct. 22, 1872
Curtiss	152,466	June 30, 1874
Appleton	169,943	Nov. 16, 1875
Salisbury	189,500	Apr. 10, 1877
Salisbury	189,501	Apr. 10, 1877
Jones	386,636	July 24, 1888
Goodman	400,330	Mar. 26, 1889
Merrow	415,310	Nov. 19, 1889
Egly	473,697	Apr. 26, 1892
Boyer	648,722	May 1, 1900
Wickham	677,832	July 2, 1901
Egly	773,722	Nov. 1, 1904
Fife	935,841	Oct. 5, 1909
Egly	956,318	Apr. 26, 1910
Scott	1,097,732	May 26, 1914
Ceska	1,337,884	Apr. 20, 1920

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208 *Answer of Additional Defendant, Julius Kayser & Company.*

Name	*Number*	*Date*
Fenn	1,364,088	Jan. 4, 1921
Post	1,401,728	Dec. 27, 1921
Wolverton	1,524,328	Jan. 27, 1925
Semonsen	1,536,274	May 5, 1925
Semonsen	1,536,275	May 5, 1925

CANADIAN PATENT.

Name	*Number*	*Date*
209 Ortega	225,612	Nov. 7, 1922

BRITISH PATENTS.

Jaecock	965/1856	Apr. 22, 1856
Schwarzbach	3,774/80	Mar. 17, 1881
Lee, et al.	24,311/93	Dec. 18, 1893
Walker	19,115/03	Sept. 5, 1903
Pogson	168,817	Jan. 18, 1921
Ortega	180,730	Feb. 21, 1921

GERMAN PATENTS.

Schwarzbach	15,876	Aug. 22, 1880
210 Hartig	106,861	Mar. 28, 1899
Kleemann	359,064	Jan. 26, 1921
Kleemann	361,782	Aug. 18, 1921

PRINTED PUBLICATIONS:

The Letters Patent hereinbefore recited:

British Patent to Jaecock No. 965/1856
Sealed Sept. 12, 1858.

British Patent to Schwarzbach No. 3774/80
Filed March 17, 1881.

Answer of Additional Defendant, Julius Kayser & Company.

211

British Patent to Lee, et al. No. 24,311/93
Accepted Oct. 13, 1894.
British Patent to Walker, No. 19,115/1903
Accepted May 5, 1904.
British Patent to Pogson, No. 168,817
Accepted Sept. 15, 1921.
British Patent to Ortega, No. 180,730
Accepted May 23, 1922.
German Patent to Schwarzbach, No. 15,878
Published on or about Nov. 28, 1881.
German Patent to Hartig, No. 106,861 212
Published on or about Dec. 19, 1899.
German Patent to Kleemann, No. 359,064
Published on or about Sept. 16, 1922.
German Patent to Kleemann, No. 361,782
Published on or about Oct. 19, 1922.
Printed instructions for operating Gearhart's Knitting Machine, Copyrighted 1920 by Gearhart Knitting Machine Company, Clearfield, Pa., published in 1920. New Edition, Nov. 1, 1921.
Printed Instructions for the new Branson Knitting Machine, page 23, Published by J. S. Branson, 505 Chestnut Street, Philadelphia, Penna., prior to 1912. 213
Book of Instructions for using the People's H. S. Knitting Machine, page 6, Published by Cardon & Gearhart, Dundas, Ontario, Canada, prior to 1912.
Book of Instructions for using the People's H. S. Knitting Machine, page 6, Published by J. E. Gearhart, Clearfield, Pa., 1894.
Instructions for using Gearhart's Improved Family Knitting Machine, Published by J. E. Gearhart, Clearfield, Pa., 1896.

214 *Answer of Additional Defendant, Julius Kayser & Company.*

Instructions for using Gearhart's Improved Family Knitting Machine, Published by J. E. Gearhart & Son, Clearfield, Pa., page 11, prior to 1898.

Instructions for using Gearhart's Family Knitting Machine, published by Gearhart Knitting Machine Co., Clearfield, Pa., in English, Swedish, Norwegian, German and Polish, 1913-1914.

Instructions for Operating the Celebrated
215 Auto-Knitter, Model B, published by Auto-Knitter Hosiery Co., Buffalo, U. S. A., Leicester, England, Toronto, Canada, 1920, pages 16 and 38.

Instructions for Operating Gearhart's Knitting Machine, published by Gearhart Knitting Machine Co., Inc., Clearfield, Pa., pages 10-16, 1920.

Instructions for Operating Gearhart's Knitting Machine, published by Gearhart Knitting Machine Co., Inc., Clearfield, Pa., pages 10-16, March 1921.

Instructions for Operating Gearhart's Knitting
216 Machine, published by Gearhart Knitting Machine Co., Inc., Clearfield, Pa., pages 10-16, November 1921.

The Auto Knitter Instruction Book, 16th Edition, published by Auto Knitter Hosiery Co., Buffalo, N. Y., Toronto, Can., copyrighted 1920 U. S. A., Canada, and England, pages 1, 20, and 36.

Instructions for Operating the Gearhart Sock Knitting Machine, Copyrighted 1918, by Miss Ada Wiener, Boston, Mass., page 20.

217

Instructions for Operating Gearhart's Knitting Machine Special Work and Family Outfit, published by Gearhart Knitting Machine Co., Clearfield, Pa., June, 1918.

Instruction Book for the Celebrated Auto-Knitter Ribber Knitting Machine, Eighth Edition, Canadian Copyright registered in Folio 31083, of Register of Copyrights No. 108, in name of William Alexander Griffith, on Dec. 13, 1915, Assignment of said Copyright by William Alexander Griffith to Auto-Knitter Hosiery, (Canada) Company, Limited, dated Oct. 25, 1916.

218

The Auto Knitter Instruction Book, 12th Edition, by Oscar F. C. Kunau, published Sept. 20, 1918 by Auto Knitter Hosiery Co., Inc., U. S. A. Copyright registered Oct. 18, 1918, Class A, XXc., No. 507,097.

The Auto Knitter Instruction Book, 14th Edition, by Oscar F. C. Kunau, published Sept. 20, 1918 by Auto Knitter Hosiery Co. Inc., U. S. A. Copyright registered Oct. 18, 1918, Class A, XXc., No. 507,098.

The Auto Knitter Instruction Book, 15th Edition, Copyright 1919 by Auto Knitter Hosiery Co., Inc.; Auto Knitter Hosiery Co., Ltd., Auto Knitter Hosiery (Canada) Co., Ltd.

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The Auto Knitter Instruction Book, 18th Edition, Copyrighted 1922 by The Auto Knitter Hosiery Co., Inc., Buffalo, N. Y.

XIV. Defendant avers that the things patented in said Reissue Patent No. 16,360 had been known prior to the alleged invention or discovery by the

220 *Answer of Additional Defendant, Julius Kayser & Company.*

said Frank C. Stephens or more than two years prior to his application for patent No. 1,564,379 and the Reissue patent in suit, and every material and substantial part of said alleged invention claimed as new in the patent in suit had been known and also publicly used by others in this country prior to the alleged invention or discovery by the said Stephens or more than two years prior to his application for patent No. 1,564,379 by the following concerns and persons:

221 Phoenix Knitting Mills Co., Milwaukee, Wisconsin,
Edward E. Busek " "
J. C. Ruedt " "
May Delebeck " "
Mrs. Helen Luell " "
Mrs. Marjorie Converse " "
Vernon Craft " "
Phoenix Hosiery Co. " "
Gearhart Knitting Machine Company, and its predecessors and successors of and at Clearfield, Pa.,
E. J. Gearhart, Clearfield, Pa.
John R. Gearhart " "
222 Roy G. Shaw " "
Ada Wiener, Boston, Mass.
Sterling Mack, Bangor, Pa.
Berdie King, Nazareth, Pa.
Calvin H. Hartzell, Nazareth, Pa.
Auto Knitter Hosiery Co., Inc., Buffalo, N. Y.

and many others not now known to defendant, but which it prays leave to insert when discovered.

Defendant, further answering, avers that the alleged invention patented in and by said Reissue Patent and particularly in Claim 23 thereof, in view of the prior state of the art at the time that

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the same was alleged to be made and as known and practiced in this country by the various persons and at the various places hereinbefore mentioned, did not constitute a patentable improvement or invention within the meaning of the patent law; that said Letters Patent and particularly claim 23 thereof did not describe or claim legally patentable subject matter, invention, or discovery and that said alleged improvement required for its production only the ordinary skill and knowledge, such as was possessed generally by workers in the art to 224
which said Letters Patent pertains: wherefore, as the defendant is advised, said Letters Patent and each and every of the claims thereof, and particularly claim 23 thereof, is and are void and of no effect in law.

XV. Defendant, further answering, avers that the matter covered by claim 23 of said Reissue Patent is not a statutory subject of patent; that it defines no patentable invention; that the Commissioner of Patents exceeded his authority in granting said patent on a defective and incomplete disclosure; and that the alleged method defined in claim 23 is not a patentable art or method in that 225
it depends for its execution upon certain specific mechanical instrumentalities or particular hand manipulations not subject to the patent laws.

XVI. Defendant avers that in view of the state of the art as it existed at and prior to the time of the said alleged invention by the said Stephens, and as evidenced by the patent, publications and knowledge hereinbefore referred to, and in view of the open and notorious use since time immemorial of frames and recessed holders for fabric to be embroidered, darned, knitted, or repaired by hand,

226 *Answer of Additional Defendant, Julius Kayser & Company.*

the claims of the Reissue Letters Patent in suit, must be so construed as to exclude defendant's device and method of use from the scope thereof.

XVII. Defendant, further answering, on information and belief, denies that there was any good and lawful cause for the reissue of said original patent; but on the contrary alleges that said original patent was not inoperative or invalid by reason of a defective or insufficient specification, or by reason of the patentee claiming as his own inven-
227 tion or discovery, more than he had a right to claim as new, and moreover, if there was any error in said original patent; it did not arise from inadvertence, accident or mistake and without any fraudulent or deceptive intention, and defendant further alleges that new matter was introduced into said specification.

XVIII. Defendant denies that plaintiff is entitled to any of the relief sought and prayed for in the Bill of Complaint; denies plaintiff's right to injunction, damages, profits, costs or accounting; or to have three-fold damages as prayed; and prays to be hence dismissed with its costs in this behalf
228 most wrongfully sustained.

N. Y., August 18, 1930.

JULIUS KAYSER & COMPANY,
By HARDY, STANCLIFFE & HARDY,
Solicitors for Defendant,
Office and Postoffice Address,
No. 30 Church Street,
New York City, N. Y.

CHARLES J. HARDY,
NOAH A. STANCLIFFE,
Of Counsel.

Amendment to Answer of Hosiery Motor-Mend Corporation.

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DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, INCORPORATED,
Plaintiff,

v.

HOSIERY MOTOR-MEND CORPORATION, KAYSER HOSIERY MOTOR-MEND CORPORATION, JULIUS KAYSER & COMPANY, a Corporation,
Defendants.

In Equity No. 48-16.

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TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK:

Now comes the above named defendant pursuant to leave obtained in open court on January 13, 1931, and order entered herein January 26, 1931, and amends Answer heretofore filed herein as follows:

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Page 8 under the heading UNITED STATES PATENTS, add:

Reynolds	7,369	May 14, 1850
Otis	44,885	Nov. 1, 1864
Armour	52,256	Jan. 30, 1866
Miller, et al.	61,630	Jan. 29, 1867
Babbitt	105,161	July 12, 1870
Shedlock	113,213	Mar. 28, 1871
Babbitt	117,501	Aug. 1, 1871

232 *Amendment to Answer of Hosiery Motor-Mend Corporation.*

Harley	156,702	Nov. 10, 1874
Salisbury	189,502	Apr. 10, 1877
Girling	288,326	Nov. 13, 1883
Stickel	296,084	Apr. 1, 1884
Stewart	312,923	Feb. 24, 1885
Merrow	414,233	Nov. 5, 1889
Briggs	461,793	Oct. 20, 1891
Minich	569,463	Oct. 13, 1896
Lyons	607,253	July 12, 1898
Shiells	668,422	Feb. 19, 1901
233 Reuther	726,758	Apr. 28, 1903
Woodward	757,378	Apr. 12, 1904
Mack	914,664	Mar. 9, 1909
Graf	916,926	Mar. 30, 1909
Diem-Beutler	917,420	Apr. 6, 1909
Hill	953,618	Mar. 29, 1910
Cook	1,048,296	Dec. 24, 1912
Black	1,062,875	May 27, 1913
Holmes	1,096,532	May 12, 1914
Pope, et al.	1,096,945	May 19, 1914
Pope, et al.	1,096,946	May 19, 1914
Lipe	1,115,469	Oct. 27, 1914
Scott	1,221,807	Apr. 3, 1917
234 Billington	1,243,133	Oct. 16, 1917
Stansbery	1,269,014	June 11, 1918
Billington	1,314,565	Sept. 2, 1919
Burson	1,333,156	Mar. 9, 1920
Burson	1,333,157	Mar. 9, 1920
Montagne	1,339,959	May 11, 1920
Akin	1,355,878	Oct. 19, 1920
Wilcomb	1,391,033	Sept. 20, 1921
Wilcomb	1,398,821	Nov. 29, 1921
Taft	1,461,007	July 3, 1923
Wilcomb	1,498,706	June 24, 1924
Wilcomb	1,506,800	Sept. 2, 1924

Amendment to Answer of Hosiery Motor-Mend Corporation. 235

Page 8, under the heading BRITISH PATENTS add:

Boult	16,130	of 1893

Same page, under the heading GERMAN PATENTS add:

Foucar	35,795	of 1885
Thope	52,053	" 1889
Kohler	60,605	" 1892
Schulte	125,108	" 1901

236

Same page add:

FRENCH PATENT.

Ortega	538,595	of 1922

Same page add:

AUSTRIAN PATENT.

Seyfert	424	of 1889

SWISS PATENT.

Doring, et al.	77,909	Pub'd Oct.	1, 1918

237

Page 9, insert under the heading PRINTED PUBLICATIONS the following:

German Patent No. 35,795,
Published in the year 1885.
German Patent to Thope, No. 52,053,
Published in the year 1889.
German Patent to Kohler, No. 60,605,
Published in the year 1892.
German Patent to Schulte, No. 125,108,
Published in the year 1901.

238 *Amendment to Answer of Hosiery Motor-Mend Corporation.*

British Patent to Boult, No. 16,130,
Accepted in the year 1893.
French Patent to Ortega, No. 538,595,
Published in the year 1922.
Austrian Patent to Seyfert, No. 424,
Published in the year 1889.
Swiss Patent to Doring, et al. No. 77,909,
Published in the year 1918.
Technology of Framework Knitting by William
Tertius Rowlett, part first, published by F.
239 Hewitt, Caxton House, Leicester, 1878, Lon-
don, W. Kent & Co. German edition pub-
lished at Leipzig by Arthur Felix, 1910, pages
354-355, Taf. 24, Figs. 503-550 and accom-
panying description.

Page 9, after line 27, insert:

George H. Slack, 119 Leonard St., New York,
N. Y. Filed March 2, 1922—Ser. No. 540,630.
John O. Seifert, 277 Broadway, New York,
N. Y.
J. H. Shekleton, 251 W. 87th St., New York,
N. Y.
240 John Wall Pogson, London, England,
Filed December 22, 1921—Ser. No. 524,226.
Jose Marcel Ortega, London W2, England,
Filed July 6, 1921—Ser. No. 482,667.

New York, N. Y. January 26, 1931.

HOSIERY MOTOR-MEND CORPORATION,
By J. S. WOOSTER,
Solicitor.

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Amendment to Answer of Kayser Hosiery Motor-Mend Corporation.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, INCORPORATED,
Plaintiff,

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v.

HOSIERY MOTOR-MEND CORPORATION, KAYSER HOSIERY MOTOR-MEND CORPORATION, JULIUS KAYSER & COMPANY, a Corporation,
Defendants.

In Equity No. 48-16.

TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK:

243

Now comes the above named defendant pursuant to leave obtained in open court on January 13, 1931, and order entered herein January 26 1931, and amends Answer heretofore filed herein as follows: At the bottom of page 7, add:

244

Amendment to Answer of Kayser Hosiery Motor-Mend Corporation.

UNITED STATES PATENTS.

Name	*Number*	*Date*
Reynolds	7,369	May 14, 1850
Otis	44,885	Nov. 1, 1864
Armour	52,256	Jan. 30, 1866
Miller, et al.	61,630	Jan. 29, 1867
Babbitt	105,161	July 12, 1870
Shedlock	113,213	Mar. 28, 1871
245 Babbitt	117,501	Aug. 1, 1871
Harley	156,702	Nov. 10, 1874
Salisbury	189,502	Apr. 10, 1877
Girling	288,326	Nov. 13, 1883
Stickel	296,084	Apr. 1, 1884
Stewart	312,923	Feb. 24, 1885
Merrow	414,233	Nov. 5, 1889
Briggs	461,793	Oct. 20, 1891
Minich	569,463	Oct. 13, 1896
Lyons	607,253	July 12, 1898
Shiells	668,422	Feb. 19, 1901
Reuther	726,758	Apr. 28, 1903
Woodward	757,378	Apr. 12, 1904
246 Mack	914,664	Mar. 9, 1909
Graf	916,926	Mar. 30, 1909
Diem-Beutler	917,420	Apr. 6, 1909
Hill	953,618	Mar. 29, 1910
Cook	1,048,296	Dec. 24, 1912
Black	1,062,875	May 27, 1913
Holmes	1,096,532	May 12, 1914

247

Amendment to Answer of Kayser Hosiery Motor-Mend Corporation.

Name	*Number*	*Date*
Pope, et al.	1,096,945	May 19, 1914
Pope, et al.	1,096,946	May 19, 1914
Lipe	1,115,469	Oct. 27, 1914
Scott	1,221,807	Apr. 3, 1917
Billington	1,243,133	Oct. 16, 1917
Stansbery	1,269,014	June 11, 1918
Billington	1,314,565	Sept. 2, 1919
Burson	1,333,156	Mar. 9, 1920
Burson	1,333,157	Mar. 9, 1920
Montagne	1,339,959	May 11, 1920
Akin	1,355,878	Oct. 19, 1920
Wilcomb	1,391,033	Sept. 20, 1921
Wilcomb	1,398,821	Nov. 29, 1921
Taft	1,461,007	July 3, 1923
Wilcomb	1,498,706	June 24, 1924
Wilcomb	1,506,800	Sept. 2, 1924

248

Page 8, under the heading BRITISH PATENTS add:

Boult	16,130	of 1893

Same page, under the heading GERMAN PATENTS add:

249

Foucar	35,795	of 1885
Thope	52,053	" 1889
Kohler	60,605	" 1892
Schulte	125,108	" 1901

250

Amendment to Answer of Kayser Hosiery Motor-Mend Corporation.

Same page add:

FRENCH PATENT.

Ortega	538,595	of 1922

Same page add:

AUSTRIAN PATENT.

251

Seyfert	424	of 1889

SWISS PATENT.

Doring, et al.	77,909	Pub'd	Oct.	1, 1918

Page 8, insert under the heading PRINTED PUBLICATIONS the following:

German Patent No. 35,795,
Published in the year 1885.

252 German Patent to Thope, No. 52,053,
Published in the year 1889.

German Patent to Kohler, No. 60,605,
Published in the year 1892.

German Patent to Schulte, No. 125,108,
Published in the year 1901.

British Patent to Boult, No. 16,130,
Accepted in the year 1893.

Amendment to Answer of Kayser Hosiery Motor-Mend Corporation.

253

French Patent to Ortega, No. 538,595, Published in the year 1922.

Austrian Patent to Seyfert, No. 424, Published in the year 1889.

Swiss Patent to Doring, et al, No. 77,909, Published in the year 1918.

Technology of Framework Knitting by William Tertius Rowlett, part first, published by F. Hewitt, Caxton House, Leicester, 1878, London, W. Kent & Co. German edition published at Leipzig by Arthur Felix, 1910, pages 354-355, Taf. 24, Figs. 503-550 and accompanying description. 254

Page 11, in paragraph XIV, after line 11, insert:

George H. Slack, 119 Leonard St., New York, N. Y. Filed March 2, 1922, Ser. No. 540,630.

255

John O. Seifert, 277 Broadway, New York, N. Y.

J. H. Shekleton, 251 W. 87th St., New York, N. Y.

256

Amendment to Answer of Kayser Hosiery Motor-Mend Corporation.

John Wall Pogson, London, England. Filed December 22, 1921—Ser. No. 524,226.

Jose Marcel Ortega, London, W2, England. Filed July 6, 1921—Ser. No. 482,667.

KAYSER HOSIERY MOTOR-MEND CORPORATION,
By J. S. WOOSTER,
Solicitor.

257

New York, N. Y.
January 26, 1931.

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Amendment to Answer of Julius Kayser & Company.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, INCORPORATED, Plaintiff,

v.

HOSIERY MOTOR-MEND CORPORATION, KAYSER HOSIERY MOTOR-MEND CORPORATION, JULIUS KAYSER & COMPANY, a Corporation, Defendants.

In Equity. No. 48-16.

TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK:

Now comes the above named defendant pursuant to leave obtained in open court on January 13, 1931, and order entered herein January 26, 1931, and amends Answer heretofore filed herein as follows:

Page 6 under the heading UNITED STATES PATENTS add:

Reynolds	7,369	May 14, 1850
Otis	44,885	Nov. 1, 1864
Armour	52,256	Jan. 30, 1866
Miller, et al.	61,630	Jan. 29, 1867
Babbitt	105,161	July 12, 1870
Shedlock	113,213	Mar. 28, 1871
Babbitt	117,501	Aug. 1, 1871

262 *Amendment to Answer of Julius Kayser & Company.*

Harley	156,702	Nov. 10, 1874
Salisbury	189,502	Apr. 10, 1877
Girling	288,326	Nov. 13, 1883
Stickel	296,084	Apr. 1, 1884
Stewart	312,923	Feb. 24, 1885
Merrow	414,233	Nov. 5, 1889
Briggs	461,793	Oct. 20, 1891
Minich	569,463	Oct. 13, 1896
Lyons	607,253	July 12, 1898
Shiells	668,422	Feb. 19, 1901
263 Reuther	726,758	Apr. 28, 1903
Woodward	757,378	Apr. 12, 1904
Mack	914,664	Mar. 9, 1909
Graf	916,926	Mar. 30, 1909
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Hill	953,618	Mar. 29, 1910
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Wilcomb	1,398,821	Nov. 29, 1921
Taft	1,461,007	July 3, 1923
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Amendment to Answer of Julius Kayser & Company. 265

Page 7, under the heading BRITISH PATENTS add:

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Same page, under the heading GERMAN PATENTS add:

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Thope	52,053	" 1889
Kohler	60,605	" 1892
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Same page add: 266

FRENCH PATENT.

Ortega	538,595	of 1922

Same page add:

AUSTRIAN PATENT.

Seyfert	424	of 1889

Same page add:

SWISS PATENT.

Doring, et al.	77,909	Pub'd Oct.	1, 1918

Page 7, insert under the heading PRINTED PUBLICATIONS the following: 267

German Patent No. 35,795,
Published in the year 1885.
German Patent to Thope, No. 52,053,
Published in the year 1889.
German Patent to Kohler, No. 60,605,
Published in the year 1892.
German Patent to Schulte, No. 125,108,
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Amendment to Answer of Julius Kayser & Company.

British Patent to Boult, No. 16,130,
Accepted in the year 1893.
French Patent to Ortega, No. 538,595,
Published in the year 1922.
Austrian Patent to Seyfert, No. 424,
Published in the year 1889.
Swiss Patent to Doring, et al. No. 77,909,
Published in the year 1918.
Technology of Framework Knitting by William
Tertius Rowlett, part first, published by F.
Hewitt, Caxton House, Leicester, 1878, Lon-
don, W. Kent & Co. German edition pub-
lished at Leipzig by Arthur Felix, 1910, pages
354-355, Taf. 24, Figs. 503-550 and accom-
panying description.

Page 9, after line 27, insert:

George H. Slack, 119 Leonard St., New York,
N. Y. Filed March 2, 1922—Ser. No. 540,630.
John O. Seifert, 277 Broadway, New York,
N. Y.
J. H. Shekleton, 251 W. 87th St., New York,
N. Y.
John Wall Pogson, London, England,
Filed December 22, 1921—Ser. No. 524,226.
Jose Marcel Ortega, London W2, England,
Filed July 6, 1921—Ser. No. 482,667.

New York, N. Y., January 26, 1931.

JULIUS KAYSER & COMPANY,
By HARDY, STANCLIFFE & HARDY,
Solicitors.

Notice Under Section 4920 R. S.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, INCORPORATED, Plaintiff, v. HOSIERY MOTOR-MEND CORPORATION, KAYSER HOSIERY MOTOR-MEND CORPORATION, JULIUS KAYSER & COMPANY, a Corporation, Defendants.	In Equity No. 48-16.

The defendants, having heretofore pleaded the general issue, now pursuant to Section 4920 R. S. hereby give notice that at the trial and agreeably to their Bill of Particulars hereto attached will prove one or more of the following special matters:

FIRST: That for the purpose of deceiving the public the description and specification filed by the patentee in the Patent Office was made to contain less than the whole truth relative to his invention or discovery, or more than is necessary to produce the desired effect.

SECOND: That he had surreptitiously or unjustly obtained the patent for that which was in fact invented by another, who was using reasonable diligence in adapting and perfecting the same.

THIRD: That it has been patented or described in some printed publication prior to

274 *Notice Under Section 4920 R. S.*

his supposed invention or discovery thereof, or more than two years prior to his application for a patent therefor.

FOURTH: That he was not the original and first inventor or discoverer of any material and substantial part of the thing patented.

FIFTH: That it had been in public use or on sale in this country for more than two years before his application for a patent, or had been
275 abandoned to the public. The previous invention, knowledge, or use of the thing patented is stated as to the names of the patentees and the dates of their patents, and when granted and the names and residences of the persons alleged to have invented or to have had the prior knowledge of the thing patented, and where and by whom it had been used are stated in defendants' accompanying Bill of Particulars.

New York, N. Y., January 22, 1931.

HOSIERY MOTOR-MEND CORPORATION,
KAYSER HOSIERY MOTOR-MEND CORP.,
276 By J. S. WOOSTER,
Solicitor for Defendants.

New York, N. Y., January 22, 1931.

JULIUS KAYSER & COMPANY,
By HARDY, STANCLIFFE & HARDY,
Solicitors for Defendant.

Narrative Statement of Evidence. 277

Paula Gibson. Called by Plaintiff. Direct.

IN THE

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, INC., Plaintiff, vs. HOSIERY MOTOR-MEND CORPORATION, KAYSER HOSIERY MOTOR-MEND CORPORATION, JULIUS KAYSER & COMPANY, a Corporation, Defendants.	In Equity No. 48-16. 278

On the hearing of this cause, evidence in behalf of the respective parties, plaintiff and defendant, was offered and given as herein stated as follows:

Certified abstract of title offered in evidence as Plaintiff's Exhibit No. 1.

Certified copy of patent in suit offered in evidence as Plaintiff's Exhibit No. 2.

279

PAULA GIBSON.

DIRECT EXAMINATION BY MR. HODGES:

Paula Gibson, a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

I live at 4315 Thirteenth Place, Washington, D. C. and am employed by The Stelos Company, the company bringing this suit, and have been with

280 this company since July 20th, 1929. I operate the Stelos needle, doing more inspecting and testing of the needles than the actual operating. I do know how to operate the needle and have been familiar with its operation since I first started with the company.

It took me I should say about two weeks to learn to operate it proficiently—to acquire speed.

Mr. Stephens taught me how to run it; there was a difficulty in the first part to learn how to stretch the hose properly in order to start the thread, that
281 is to separate the thread to get a clearance for the needle, and then after you learn that you have to learn how to hold the needle lightly and learn to operate it.

You usually hold it in the proper position, which may vary a little bit with different operators.

It is very necessary to stretch it properly, because it is necessary to stretch it tightly enough in order to separate each thread so that the needle can get into it. It is necessary to manipulate it and to change the run as you go into it; that is to say, you have to loosen it and tighten it, and that is done most of the time while you are operating, more or less, without thinking.

282

The Court: You do that as you go along almost automatically?

The Witness: Almost automatically.

By Mr. Hodges:

Q12. That is what we express in the claim as "stretching the fabric over a suitable holder"? A. Yes, sir.

I have a run here. I am in a comfortable position.

BY MR. MORRIS:

Q15. Is that the one that Judge Woolsey had?
A. No, that is my own needle.
Q16. There is no difference between the needles?
A. No.
Q17. What are you using now?

The Court: That is hers and this is mine.
The Witness: I can use the other one, if you want me to.
Mr. Morris: The guard is duller.
The Court: Are they? 284

The guards are not all alike; the needles are not all alike. They cannot be made exactly alike, because they are very small.

The guard is the black thing over here on the side.

Well, the reason for the difference is that these are all hand made, and they cannot be made exactly the same. It is impossible for them to be made exactly the same.

I am willing to use either needle. I should say that the stocking I have is moderately sheer, fine thread. 285

This is the way you start it right here.

I could not say how many cross threads there are to an inch. It looks to me like about 40 or 50. (The witness proceeded to count the same.) I do not think it has as many threads to the inch. I should say that it has about 50 threads; well, it is about 40.

The needle being used is the one that Judge Woolsey has been presented with.

I can look away while I am doing that.

286 *Paula Gibson. Called by Plaintiff. Direct.*

BY MR. HODGES:

Q32. You say you can look away while doing it? A. Yes, sir, I can do so. (Witness looks around.)

You don't have to watch it all the time—after you once get your position, you can not see the threads going into the needle anyway, but you look at it in order to watch the position of the run from time to time in the easiest sort of way.

I should say it is more or less a touch method.

I go in both directions toward the hole.

The needle is worked towards the hole where the
287 break was in order to get a single fastening partly, and it also gives a better operation. I have in my hand now just a plain hook to put the thread back, fasten it back in this manner.

The run is here. Of course, we put a finish on it.

BY MR. HODGES:

Q39. Now, go very slowly, just to show this action. A. Yes, sir, I will do so.

Q40. Now, Miss Gibson, go slow enough—go a little slower than you have been going even now.

BY THE COURT:

288 Q41. Now look away and do it slowly while I look at it through my magnifying glass. A. Yes, sir.

Q42. Now that is very good. Just keep on doing it like that for a moment while I watch it. A. Yes, sir, I will.

BY THE COURT:

Q43. Tell us how it works. A. First you catch the hook in the loose thread and a loop in the bottom of the run.

BY MR. HODGES:

Q44. Explain that, will you? A. You catch the last loop in the run, and push the needle down through the fabric until the loop clears the latch, and then bring the needle right up and the latch catches in the next thread and pushes it in the hook and you bring it all the way out and the first loop is caught in here this way with the latch. Then you return it this way with the hook, the second one would be here, and then you go down again and up again and catch the next thread. (The witness illustrates in unison with her testimony.) 290

Q45. Explain how the first one is done and how the second one is done. A. The hook catches on the next adjacent thread and holds it there, and then the latch catches it when it comes up.

BY THE COURT:

Q47. Explain now just what you mean. A. Well, it hits on the next thread and forces it into the hook in this manner. It is then caught in this manner. When the latch is completely closed, then it catches the next thread in the hook.

291

BY THE COURT:

Q48. Now, the only difference between the first and the rest of it is that with the first one you push the hook under this? A. Yes, sir.

BY MR. HODGES:

Q49. In starting it do you always push the hook in the last loop or push it in from below, do you do it that way? A. I put it in below. It is diffi-

292 *Paula Gibson. Called by Plaintiff. Direct.*

cult to catch the last loop, because it is below. I mean by that, that if it catches below it is very much easier. After you once catch it, you just go right ahead and you do not have to worry about it.

You can start it in the last cross thread of the loop, if you want to.

You push it back because that lets the run run into the hook. It is quicker because the loop is smaller.

Different operators hold the needle at different angles, but I prefer slightly to the side, because it
293 rests on the thread and the latch rests on the next thread, I think that is the proper position.

The guard is on the side and is shoving the next thread, allowing a little clearance space in there.

The guard helps to break the path there, and to protect the latch in order that it will not get in any tangle, that it will not be tangled up with any other threads, because in stockings where the threads are very close together, you need to keep the guard clear, that is to say, the guard keeps the latch clear so that you will not get tangled up with these threads. The threads are very closely woven together in some hose.

I am using the final mend. I do not know what
294 needle this is.

BY THE COURT:

Q61. No, that is not mine. It is a different shaped needle as to the guard. A. I think possibly this is it.

Recess from 1:00 to 2:15 o'clock P. M.

PAULA GIBSON resumed:

(Needle No. 5, the one filed pursuant to order of Judge Caffey opened in Court here today, marked Plaintiff's Exhibit No. 3; the cup marked Plaintiff's Exhibit No. 4; and the stocking marked Plaintiff's Exhibit No. 5.)

CROSS EXAMINATION BY MR. WOOSTER:

Prior to working for Stelos in July 1929, I had been occupied, but not in knitting or stocking repairing. I knew nothing at all about it. The first I had to do with stocking repair was when I took this position with Stelos for that purpose. 296

Mr. Stephens was the one who taught me; he used no printed matter nor written instructions. He told me by word of mouth and illustrated it. He used a china or porcelain egg cup, an ordinary china egg cup.

I should say it took me around two weeks to become proficient. I could not say definitely, how much speed I got, but I learned how to hold the needle. My speed has increased since the first two weeks.

I testified in the Finch case and also in the Gearhart case. I could not say definitely if my speed has increased since I testified last fall in the Gearhart case and the preceding December in the Finch case; I suppose it is about the same. 297

After you get up to a certain speed you do not get any faster; after you learn to do it just as fast as you move your hand you cannot get any faster than that. I do not recall that Mr. Stephens asked me to read this reissue patent here in suit at the time I was learning. I read the claim some time,

298 *Paula Gibson. Called by Plaintiff. Cross.*

I do not recall when it was, but I should say it was after that first two weeks. I guess that was the first patent claim I ever read. After reading the patent, I did not change the method that Mr. Stephens taught me.

I held the needle in my work this morning as I hold a pencil, moving it in its own length. That was the way I held it when Mr. Stephens taught me. I never compared that way of holding it in its own line with the pictures 4, 5 and 6 in the patent in suit. I think the position of the needle in Fig. 4
299 is more lengthwise to the run than it is in Fig. 5 and Fig. 6.

XQ89. Do you recognize Fig. 5 as being a position of the needle succeeding the position shown in Figure 4? A. What was that?

(XQ89 Repeated.) A. You mean when I am operating that this is the first position and this is the second, is that what you mean?

XQ90. Yes. A. I do not think the needle is exactly like that, but it is very nearly, it is over towards the side, I do not know if it is exactly the same.

I agree that the position of the needle is more lengthwise to the run in Fig. 4 than it is in Fig. 5
300 and the position of the needle in Fig. 5 is more at an acute angle to the run than it is in Fig. 6.

You have to turn the needle in finer and thicker hose—you turn the needle a little more this way in order that the latch will fall on the next thread, so your needle is not always in the same position on different hose.

I see that on these three figures of the patent the size of the hose is not changed. I could not answer if these are positions for fine hose or coarse hose, because I do not know. I know that the patent in

suit says that the method can be used with sweaters as well as for stockings and other knit goods; and a sweater is much coarser than a stocking. I could not say as to whether the needle positions shown in Figures 4, 5 and 6 are more suitable for large knitted coarse goods, like a sweater, than goods like a stocking; I have never knitted a sweater. My experience has been with stockings.

I do not think that the gauge is the number of threads to the square inch, but it has the relation to the number of threads. I know some are finer than others. Most of the stockings I have worked 302
on would be about 42 gauge. That is a common gauge. I think there is a 100 gauge hose. I do not know how many threads that is supposed to be to the inch, but I know it is very much finer. I could not tell how much coarser.

When Mr. Stephens instructed me he did not tell me what the notch in the shank is for. I just thought that was the way the needle was shaped. I do not think it has anything particular to do with the actual needle. When the thread drops off the end of the latch when it is opened, I do not think it goes into that notch. Mr. Stephens started teaching me with a regular needle, a regular Stelos needle. He did not give me any needles made by 303
anyone else while I was learning. I have only worked with the Stelos needle. That had magnetism in it that made the latch fly open, and had a guard on the right of the hook.

I have never used any other needles, but I have tried them. In the Gearhart case, I used a needle explained to me as being a Lee needle with a spring behind the latch. In that case, I said I could do work as fast with Lee's needle as with the Stelos needle.

304 *Paula Gibson. Called by Plaintiff. Cross.*

When I was first learning, Mr. Stephens did not tell me to be sure to have a cross thread go down between the guard and the shank of the needle.

When I worked the Stelos needle the cross thread does not go between the guard and the shank; the loop does.

In Fig. 5 of the patent, I see the thread between the guard and the needle. That is the way Mr. Stephens taught me to do it. I know the needle is in two pieces; the guard is alongside of the needle, and you put the thread on the hook and it slips
305 from the hook and it would naturally go in between the guard and the shank of the needle. That is true in any position that I hold a Stelos needle, so far as I know.

XQ132. Put a run on the holder, please. A. Yes, sir.

XQ133. Hold the needle in alignment with the run. A. Yes, sir.

XQ134. Have you got it there? A. Yes, sir.

Mr. Hodges: Do you mean in the vertical plane?

Mr. Wooster: Yes, sir.

306 XQ135. You are running it head on? A. Yes, sir.

XQ136. Now, hold it, hold that needle in alignment with the run. A. All right, it is in alignment, I have got the needle in alignment with the run.

XQ137. Yes, I want you to hold the needle in alignment with the run. Now, can you not reloop? A. The thread gets between the guard and the shank. I do not know what you mean. Oh, I see. No, you can not.

XQ138. Yes, you can. A. I do not see how you can, I do not believe it. I do not see how you can, because if you have the loop there, if you have the loop on there and I push it down that loop goes in between the guard and the shank.

XQ139. Only if you hold the needle at a certain angle. A. No, No, No. At any angle. It cannot go over the guard unless you force it over slowly.

XQ140. Hold that needle more vertically and go down there. A. All right, yes, and it still goes between the guard and the shank.

XQ141. Turn your handle a little. A. This way? 308

XQ142. So the guard won't take the loop. A. The guard does not pick the loop up.

XQ143. It is the way you hold it. A. No, this guard shoulders it off, and starts it over this way. The loop is on the shank of the needle and it goes in between that and the guard. It can't go any other way.

XQ144. You say there is no position in which you can hold the needle where the loop does not go down between the guard and the shank? A. I do not know of any.

XQ145. Is that right? A. I do not know of any.

XQ146. You say that is true of any position from 309 vertical to any lateral position, is that right, according to your understanding? A. Yes, sir.

When Mr. Stephens started to teach me he had an egg cup for a holder, and that is the only kind of a holder I ever saw around that place.

XQ149. Do you know if the patent in suit says to use a porcelain dish? A. I suppose I have read it, I paid no particular attention to it.

XQ150. On page 1, line 12 of the patent, it says:

310 *Paula Gibson. Called by Plaintiff. Cross.*

"To stretch the fabric over a porcelain dish allowing sufficient depth for the free use of the needle"?

A. Yes, sir.

XQ151. Is this a porcelain dish which I show you?

The Court: That is a saucer which you are showing the witness.

A. Yes, I think so.

311 XQ152. I show you a saucer. A. Yes, sir.

I would say that it was not of sufficient depth for a needle. I cannot get the hose over it in the first place. I do not think I can. Yes, I have it over this saucer.

I cannot apply my method. It does not have sufficient depth, I can not manipulate the needle properly, I cannot keep it running straight, and keep the thread straight. I have no manner of holding it. It is too large.

BY THE COURT:

312 Q158. It is too big? A. It would have to be something that you can stretch all the way around, you can get your hand on all the way around, and hold it.

I cannot stretch the run properly over the other saucer shown me because I cannot get hold and stretch it on all sides. I cannot keep it straight. When I try to stretch it, it turns sideways and every other way. I can tighten the fabric so as to bring the ladder parallel, and spaced apart, for the needle to go through.

XQ164. But still you cannot reloop it? A. Well, if I can, yes. Well, I can take a few loops but I cannot run it properly, I cannot get any speed because I cannot use it right.

I can do the method that Mr. Stephens taught me, but I have no support for my hand. I have nothing to rest it on, nothing to rest my hand on. I cannot use the position. I would have to lay it on something to handle it properly. It is too big for my hand, I cannot use the position. I would have to lay it down entirely in order to change it each time. You have to have something that you can 314
hold on all sides and have that clearance space in between. That is by the method that Mr. Stephens taught me in order to hold it, that is the way I was taught.

XQ169. I show you an ordinary needle with the guard off and a small spring to open the latch. Do you recognize that as being similar to the needle which you worked in the Gearhart case which had a spring to open the latch? A. I could not say because I did not examine the needle. I was told it had a spring.

I can work that needle without looking at the run, the way I did my own needle this morning. I can feel it the way I did my own, because I am 315
doing it according to the Stelos method with the method that Mr. Stephens taught me. That is what I call the Stelos method. Of course, I like my own needle the best, but this needle can be used freely.

(The spring latch needle was marked for identification as Defendants' Exhibit A-39.)

I do not know that I have worked the ordinary, simple pivoted latch needle, which is sold on the

316 *Paula Gibson. Called by Plaintiff. Cross.*

streets and department stores for reknitting runs. I have seen them, I have seen them demonstrated. The green-handled plain latch needle shown me compares with what I have seen. I cannot do my method well with that plain latch needle because the latch does not open and it catches on the next thread. I can do a few stitches like that. It is not only that I cannot do it so fast, the latch won't open, and it catches. But I did carry out the Stephens method, but very slowly, with this plain latch needle.

317 (The needle with attached card was marked for identification as Defendants' Exhibit B-40.)

I said this morning that in the method which Mr. Stephens taught me, with the closing movement of the latch, it threw the next thread into the hook. You have to hold the needle so it won't get entangled with the thread. I don't know if there is any position in which you can hold the needle so that the cross thread gets in the hook without being touched by the latch, as it closes. I never saw one. All I know is that the latch does throw my thread into the hook. I would not say that it threw
318 it in or hit on the next thread; when you bring the needle out, the hook and latch together catch the next thread and it forces it into the hook and holds it in.

I understand the way read from the patent commencing page 1, line 45:

> "The latch reaches for and grasps the thread to be looped, forces it into the hook and the latch is then tightly closed by the loop already on the needle."

I think that is what the needle does, I think that is what happens. That is the way it happens with the Stelos needle, using the method which Mr. Stephens taught me. That is the only way I know to do it.

(The saucer and fruit dish shown the witness were marked for identification as Defendants' Exhibits C-41 and D-42 respectively.)

CROSS EXAMINATION BY MR. MORRIS:

Mr. Stephens just showed me the necessity of 320
stretching the hose and holding it on all sides on the egg cup, so that the run be kept straight and the threads be kept apart and you had to hold onto it and manipulate it, when necessary. He said you have to manipulate it if it is not exactly straight or if it is too tight or too loose—to loosen or tighten it or change the position, whatever the case may be. That was the first day probably.

XQ196. What did he have to disclose to you thereafter, if anything? A. About what?

XQ197. About the method. A. It is not disclosing, it is learning how to do it. You have to learn how to do it; you cannot do it without experience. 321

That would simply require experience without further telling. Mr. Stephens said the same thing again after the first telling, he would have to remind me how necessary it was. He cautioned me time and again how necessary it was for a period of at least two weeks.

XQ201. Now, will you take your egg cup and the spring latched needle—do you mind using this Defendant's 39-A for identification?

(Exhibit handed to the witness.)

322 *Paula Gibson. Called by Plaintiff. Cross.*

Now, where did you insert that? A. I inserted that in two or three loops behind the last one.

XQ202. You can do that with that needle? A. Yes, you can put anything in and it may be a pin, or anything.

XQ203. It is not necessary to insert the hook with that needle in the first loop of the fabric to be repaired. A. It is not absolutely necessary, no.

BY MR. MORRIS:

XQ205. Let us see you operate that. How many
323 different motions are you using? A. I am using two.

XQ206. You are not using four? A. No, because I am doing the Stelos method.

XQ207. Would you use that needle once more, please? Is the spring working? A. No. Is this supposed to be the spring? It is not opening the latch. I do not know why it is not catching.

BY THE COURT:

Q208. Did it catch before? A. Yes.

(The witness was handed another needle.)

324

That works all right. I do not know how the latch works in that because I have not examined it. It is opening. I cannot tell whether it has a spring or anything. I cannot tell what is making it open. I can operate that one by looking away from my work.

BY MR. MORRIS:

XQ214. Is there any more care required in operating that needle than the Stelos needle, to see

that you do not get more than one thread in the hook? A. No.

XQ215. Just one more question. Where is the most skill required in performing the demonstration which you have just made in the operation of the needle, or in the adjustment of your fabric over the cup? A. Well, in the two together.

I cannot operate the needle from a practical standpoint unless the fabric is properly stretched.

XQ217. May I hold the fabric and let you operate it? A. Yes.

XQ218. I will not do that, but get you to hold 326
it in a different position. (Indicating.) A. Is that different?

XQ219. Can you operate it from that standpoint? A. No, not unless it is tight this way, as well as that way.

XQ220. Then it has to be tight a particular way; where is the more skill required after you begin the operation, in the manipulation and adjustment of your fabric or in a particular angle at which you hold the needle? A. After you insert the needle and start it, if you hold the hose properly, the needle would just go along by moving your hand; if you don't hold the hose properly, you cannot go 327
along right.

The first thing I do after putting the fabric on the egg cup is to hold it loosely in order that the run won't run down, then I insert the needle and then I stretch it tighter.

REDIRECT EXAMINATION BY MR. HODGES:

I have had little practice with Defendants' Exhibit B, I have tried it out on two occasions, only one or two occasions. I could not say whether or not I would pass that as a reasonably perfect and

328 *Paula Gibson. Called by Plaintiff. Recross.*
Paula Gibson. Called by Plaintiff. Redirect.

satisfactory needle the way it is. I use the needles and run them through and if they run correctly and work correctly then they are usually passed. It is not the looks that count.

One of the needles worked satisfactorily and one did not. That one does not open. It has to be forced open. I should not think it would work any better unless it had some means to open the latch.

In the trial in Pittsburgh, I worked on this type, the spring latch needle, reasonably well. I did not
329 try any one with no spring or magnetism at all in it.

RECROSS EXAMINATION BY MR. WOOSTER:

It is not what I understand as the Stelos method if the latch does not open itself. The Stelos method is stretching over the holder so that you have suitable clearance and go down through the fabric, rather than work on a plane, on the plane of the fabric.

RXQ233. * * * I ask you if the Stelos method is present when you use the needle in which the latch does not open but has to be forced open? A. I
330 would not call it exactly the same. It goes through the material, but if the latch does not open, but has to be forced open against the thread, it would make an extra movement and it would be forced down and break the thread in many cases.

That is not the Stelos method where you have to force the latch open and against the thread.

REDIRECT EXAMINATION BY MR. HODGES:

I am not familiar with patents and expert in construing of claims respecting, or with respect to construction.

FRANK C. STEPHENS.

DIRECT EXAMINATION BY MR. HODGES:

Frank C. Stephens, a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

My name is Frank C. Stephens; my age is 49; my residence is 1016 16th Street, Washington, D. C. My business is the hoisery repair business. I am connected with The Stelos Company; I am Vice-President of The Stelos Company. I am the patentee, Frank C. Stephens, of the patent in suit.

I have testified in connection with the patent in 332
various suits for infringement of the patent in the City of Pittsburgh, Kansas City and Washington, D. C.

I came to invent this method after I had seen a woman using what we call the finger method. She would stretch the hose over her finger, the hose having a run, and with an ordinary latch needle she would pick up the run or loop up a run or raveling. Inserting the hook end into the run or loop she would push that needle forward until the loop on the shank would go back of the latch and then she would pick up the next forward thread into the hook of the needle and pull that thread which was 333
in the hook through the other loop and continue that until she repaired the run or the raveling.

I once noticed her doing that and it occurred to me at the time why some device could not be gotten out or manufactured whereby we could reciprocate or have the rapid motion go through the fabric that would avoid all this unnecessary strain. It was very tedious as I watched her doing it that way. That is when I first conceived the method. Later I wanted to devise some method and I worked it

334 *Frank C. Stephens. Called by Plaintiff. Direct.*

out. I wanted a device, some means of doing that, and I worked it out as I said. I wanted to devise some quick method of accomplishing that work. I started off and the present method and needle that I patented is the result of that work.

My first conception was the method. The method of reciprocating through the hose. Later, the device to accomplish that method.

I think that there was a period of some six or eight months at least between the working out of the method and working out the details for improv-
335 ing the needle. I think it must have been six or eight months that I conceived the idea or the method that I worked out the proper device.

In developing the method, I tried various needles including what we call the hook needle. I used the crochet needle. I finally concluded that the needle I had seen used was the old latch needle, I mean by that that I finally concluded that the needle I had seen used, which was the old latch needle as I call it was probably the best. I got hold of that and worked it out with that old latch needle. I have even laid on my back to see the working of that reciprocal motion so that I could get the latch to get the proper action if it dropped back by grav-
336 ity. My idea was to get some needle that would open at the juncture that the loop is falling off the end of the latch so as to permit the downward stroke. (Witness indicates.)

I used the word "strain" in one of my former answers to mean eye strain. With that method, over the fingers, as I say, as I saw her doing it, she had to continually watch each thread and I consider that to be very much of an eye strain. That is what I meant by that. It was a slow, tedious method, a slow process.

After I got out my device and what I call the method, I used these different forms of stretcher but I wanted to get a form of stretcher where I could do it more rapidly and more conveniently. I saw that the holder somewhat similar to and like an egg cup was the most convenient and simple holder due to the fact that I could manipulate the hose and stretch it in all directions. It was convenient and it gave me freedom with my left hand to make changes of any kind, and left that hand more or less free. I still used my left hand, that is to say, I could still use my left hand by means 338 of using this egg cup. In other words, I had the freedom of my left hand. With reference to such things as embroidery hoops, I tried that out and I found that to involve the use of my left hand. I would have to hold that embroidery hoop in that hand and work with that hand and I saw that I would have to look further for a more suitable holder, something that I could work more freely and manipulate the hose.

There were many more objections to the embroidery hoops. In the first place, it would permanently stretch the hose and where there was more than one run, there was the danger of the other loops unraveling and I would have to have something in 339 there to keep them from unraveling, such as pins. In the case of slipping, or not catching the next thread, the loop would fall out or the needle would fall out and the run would run back and get into the space between the two hoops. That would necessitate going back and taking out the hoops and it was not a suitable holder for that purpose. We could not operate as well and in order to be of a practical or commercial value we knew it not only had to work, but at a rapid rate and without mis-

340 *Frank C. Stephens. Called by Plaintiff. Direct.*

takes. In working over the hoop if it slipped out the loop would run, the run would run back, and we would lose all of our work and we would have to start all over again.

Q20. Were the embroidery hoops used one on top of the other hoop; one around the other so when you set the stocking between the two, did that have the effect of stretching them to some degree? A. The stocking in stretching over one hoop would stretch over that material quite a bit and it would cause a permanent stretch which was a very bad thing at times.

341 After the needle was pulled out the run would run back and get in between the two wooden holders. That would necessitate taking the holder apart and rearranging the stocking and catching that loop again by carrying it on. The mere pressure of putting the hoops together would have a tendency to cause extra runs and inconvenience and if you did that you have to have pins and so forth where there were multiple runs. I did not think it was a suitable holder for those and other reasons.

Our area concerned is not so large. Of course, our easiest run is a single run. I have had a run I think of quite a sizeable manner, as many as ten,

342 fifteen or twenty loops at a time and the danger of all these loops stretching when one of these embroidery hoops is used is a serious thing because if we drop one of them we will have to start all over again with these other loops.

By the use of this egg cup I am able to have the pressure plastic and the area minimized at one time and also to have the loop eased off if it slipped out of the needle—you could ease off the pressure. In manipulating the hose you can immediately release the tension. I have a small area to work on, and

that can be made with a heavy pressure or light pressure instantly and at will.

It facilitates the operation by being responsive to the conditions I am dealing with.

I tried an ordinary hook and latch needle while stretching over the holder at first I would say that it was reasonably successful with practice, it can be done and with fairly good success. I mean such a hook latch needle as that used in the Stark case in Kansas City. That was a plain hook and latch needle, with no spring nor anything else. It compared with Defendants' Exhibit B, not speaking of 344
the quality or perfection of finish, the hook and latch are like the hook and latch needle of the Stark needle in the Stelos vs. Stark case, Kansas City only this a shorter latch than the one they used there. The size of the latch varies in different needles as also does the hook. The type of needle was identically the same. I was present at that trial.

In demonstrating this needle, Mrs. Stark was quite rapid. She had established a business with several operators; she had them all trained to do that work.

(The record, Stelos vs. Stark, was offered as 345
Plaintiff's Exhibit No. 6.)

Adjourned to 10:30 A. M., March 20, 1931.

346 *Frank C. Stephens. Called by Plaintiff. Direct.*

After adjournment.

FRANK C. STEPHENS, recalled.

DIRECT EXAMINATION BY MR. HODGES (resumed):

I instructed Miss Gibson in the use of the Stelos method. At that time, in the early stages of our business, I did the instructing. I would say I instructed at least eight or ten operators, and they instructed others, and they became practiced. It generally required much practice to attain efficiency
347 and perfection, I would say it takes at least two weeks. Some of them who were more adept, learned quicker. Some of them in three or four days, but usually, we consider two weeks is required.

There is a difference between the operation of the two hands of the operator. As a rule the girl early learns to use the needle with the reciprocating motion, and it takes her longer, however, to practice the manipulation of the hose over the holder. I found that when they once got to using the cup right or stretching, they immediately got along all right and improved from there on.

Q45. Judge Morris asked Miss Gibson this ques-
348 tion: "Is that the Stelos method where you have to force the latch open and against the thread"? and she answered: "No, it is not." Do you agree with that or not? A. Well, I could not quite understand the question as to whether he referred to the loop thread opening the latch or whether he referred to the next forward thread opening the latch. However, in opening the latch, I would consider it the Stelos method, if used over a holder and stretching over the holder.

In my method the latch is pushed by the next forward thread. That is opened by the magnetism

to a degree, but from there on, as the loop thread passes, the loop thread goes in between the guard, then that loop will continue as the needle goes on down, finishing the stroke, it then does push this latch open. The magnetism or first opening is only partial and probably to that degree then that loop thread does from that point push the latch back again.

The loop thread is the thread that is on the shank of the needle, on the hook of the needle. As you go down that pushes the latch back. The loop thread is then back of the latch, closing the latch in this 350.
direction, until that loop is cast off, the end is closed immediately, that slips off and the latch is open. When that opens, that facilitates the downward movement of the needle. If the latch was not opened, it would open and catch under the threads on the downward stroke and entangle the run. In catching my running loop, I insert the hook down through the fabric until that loop passes back of the latch then I reverse the movement, which causes that latch to fly forward, forcing that next thread in the hook of the needle. It is this thread that has just emerged from the hook of the needle which presses the latch down against the hook of the needle. Now, I pull that through, forming a new loop. Now, 351.
my latch is closed. But in my method, at that juncture it would fly partially open, which would permit this stroke going down, whereas if that latch was not partially opened—it would go through down here (indicating). The motion would have to be more of a longer motion in order to clear it in the fine fabrics, because that latch opening under, either by a spring or maghetism. The idea is to have the jaw slightly opened, as you push down, so as to have it hit on the under side by the next

352 *Frank C. Stephens. Called by Plaintiff. Direct.*

succeeding cross thread and push it back so that all that goes down through the substance of the fabric on the down stroke would be the hook, that is, on the downstroke, just the hook goes through. On the upward stroke there would be no liability of the latch catching. With that guard on it there, the back stroke is clear. On a downward stroke the opening of this latch, if it is partially opened, would facilitate that stroke when it opened on top of the fabric. All that goes through the fabric on the downstroke is the hook. On the upstroke, the
353 latch, having been caught by the last cross thread, is pressed down so as to close the jaws and enable the up pull to be through without the rest of the hook engaging. That is, the opening going down and closing coming up, two movements, one inserting movement and one return movement. If you do not have something that automatically opens the jaws of the device and separates that latch from the hook on your downstroke, you are liable to have considerable trouble of having the latch either going down below or else being caught in the thread as it goes up. You will be very liable to break the threads.

There was trouble with that cheap device, the
354 green one we had yesterday. I have an opening in there, and I think you can see, you can watch the action of the latch, as I push this through there. Now I am ready for my downstroke. You will see the thread as it is caught in the hook. The hook will begin to open, that is to say, it will begin to open that latch at that juncture. It opens below the surface and if you watch the action of that, in these threads, you can see it. This also has to come back of this latch. You can see both the hook and the latch are down below the fabric. The latch is open

downward and lying back against the shank. When the latch goes beneath the surface, it is not functioning as a latch then. It is out of the way by being pressed back by the pressure on the thread that comes over the hook. It is later picked up by the same thread and it closes up so the hook on the needle won't catch on it as it comes up. You have got to have the latch to prevent the hook from catching, to close the jaw. You close over the next thread and the hook seizes it and the firmness of the closing is accomplished by the pressure of this thread on it, and the only function of the spring or the 356
magnetism, or whatever device for holding the jaw open might be is to make it hospitable to the next thread and enable you to pick up this next thread without having the jaw open at that point.

CROSS EXAMINATION BY MR. WOOSTER:

In dealing with a yarn such as would be in a sweater, on the downstroke and the latch closed on the hook if it is opened automatically, I would say there would be a tendency for the point of the latch to penetrate the yarn if it was not partially open at that point. With a fine thread such as a hose, the tendency to pierce the thread or penetrate 357
the thread or yarn of that cross thread would depend upon the size of the thread, and the sharpness of the point of the latch. There would be a tendency, whether it did or not. The self-opening eliminates that tendency. In our method it facilitated the forward or downward stroke by being partially open. The self-opening of the latch facilitates the reciprocating or "punch motion." The self-opening would not have anything to do with limiting or broadening the angles at which I can hold the

358 *Frank C. Stephens. Called by Plaintiff. Cross.*

needle relative to the run. We can hold it in most any position. It could be used in any position or angle.

My needle has no greater range of operation or operative angles than the pivoted latch needle the Mexican woman had. You can hold either one of them at the same angle. The woman I saw using that needle was a Mexican woman. I saw her in Mexico City, in the early part of 1921 or the early part of 1922. I was in the mining business at the time. I had been in the mining business most of
359 my life. I was born and raised near the mines and continued there. Previously, I had nothing whatever to do with knitting. I had never seen a knitting machine. The needle that the woman had was the first pivoted latch needle I had seen. I did not know it was a needle used in a knitting machine. The only thing I remember was noting the back end of the needle had a handle to it; she made a handle there and she mentioned that she had formerly worked in the mills. I presume she had gotten the needle at the mills. She did not tell me that it was the needle used in the knitting mill; she learned it in the mills. She had learned that reknitting operation in the mills. That is what she said.

360 The woman had two or three needles, but the first one, as I recall it, had what you are calling a butt there. I do not know what you would call it. I did not know what that butt was for when I first saw it. I know now that it is the part that the cam in the knitting machine operates. I knew that after I came to the States, no, I did know it before that, that they were using them in knitting machines. I do not recall when I was told that. It was after I had seen this needle, sometime afterwards.

(The butt needle with the pivoted latch was marked for identification as Defendants' Exhibit E-43.)

I would imagine that this Mexican woman had learned what she knew of knitting in mills in Mexico. I don't think she had ever been in the States—not that I know of. She was not in the business of repairing when I first saw her doing this work. She was a housewife. Her name was Mrs. E. A. Marr. I got my first needle from her after I made my conception of improving her 362
method. It was the same kind of needle as I have described here, an ordinary latch needle. I think that needle was a little longer than the one marked for identification as Defendants' Exhibit E-43. It was longer in length but the principle was the same. It was a latch needle. I now know that the lengths of those needles varied considerably, according to the type of knitting machine they are to go into, but you asked me the question, whether it was the same.

After this lady gave me the pivoted latch machine needle, I used it in working the method that I had seen her use, which was over the finger—stretching over the finger, and later I began, as I say, I had 363
conceived the idea that if that needle could be used through and in a reciprocating manner or punch method, that I was practicing with that needle to find out what could be done with it. I used it a short time with the finger method.

I do not remember if the needle punched through the goods the first time I tried it or not. The difficulty I encountered was to get the needle down through by stretching over the holder, to get the needle down in a downward stroke without the latch

364 *Frank C. Stephens. Called by Plaintiff. Cross.*

entangling with the next thread or fabric. I did have difficulty the first time I tried it. I do not consider it difficult with the latch open, but with the latch shut—quite so.

This woman was not using my method, she got hold of the loop by catching it on the surface, hooking the first loop. She turned the hook upside down. I use a different method of catching the first loop in my method by stretching over the holder.

The last thread caught in the hook is not a loop; I am already through the loop. Fig. 6 of the patent
365 shows my third or finishing stroke. It is also the first before Fig. 4.

XQ131. What I want to know is, first, how the Mexican woman got hold of the loop with the hook of the needle. A. If you will permit me to demonstrate, I think I can explain it better by showing.

The Court: I think that is fair enough. You can do it with your finger and show what she did.

By Mr. Wooster:

XQ132. Please state for the record what you do.
366 A. I am stretching the fabric over my index finger.

By the Court:

Q133. Of the left hand? A. Of my left hand.

By Mr. Wooster:

XQ134: With the end of the loop near the end of your finger? A. Or towards me.

BY THE COURT:

Q135. What are you using, what instrument? A. The ordinary latch needle.

Q136. The Mexican type, all right, go ahead. A. What I seen her do was to turn the needle upside down—the hook upside down, with the handle pointing away from her.

Q137. With the hook towards her? A. With the hook towards her. I catch that running loop in the hook, turn my needle back to this position, and I have got that through.

368

BY MR. WOOSTER:

XQ138. Now you have got it like your Fig. 6, have you not? A. No, my latch is open at that juncture.

The Court: That is right, his latch is open. And then what did she do?

The Witness: Then she would push that needle forward, forwardly until that loop is back of the latch. She would then reverse the movement, bring that loop back of the latch, closing the latch. She would then come under and catch the next thread in this manner (Indicating).

369

BY MR. WOOSTER:

XQ139. After the latch closed? A. After the latch closed.

XQ140. And caught the next thread. A. Caught the next thread.

XQ141. With what? A. With the hook.

XQ142. The hook was closed by the latch, you said? A. She would force the latch open with that next thread, the next succeeding thread in the man-

370 *Frank C. Stephens. Called by Plaintiff. Cross.*

ner I am showing you. Then that next thread is in the hook. She would then pull that thread through in that manner, forming the new loop. Then she would open the latch, letting the thread go back of the latch again, as before, reversing the movement, closing the latch, coming under the next thread, getting that in the hook, and pulling that through.

BY THE COURT:

371 Q143. She opened the latch by pressing on the next succeeding thread? A. The next succeeding thread.

BY MR. WOOSTER:

XQ144. How many threads were above the open end of the latch at one time?

The Court: Above the latch when opened, do you mean?

Mr. Wooster: Beyond the tip of the latch.

A. There is only one thread, as I understand it.
372 That is the loop thread, which is on the latch.

BY MR. WOOSTER:

XQ145. That is all you have in yours now, isn't it? A. Yes, sir.

XQ146. Did this lady give you any instructions in working the way you have just worked, or did you get it from seeing her do it? A. I got it from watching her at various times.

XQ147. How many times do you suppose you watched her? A. Well, I don't know how many

times, but inasmuch as I was living at her home and she was repairing her own stockings at various times, I would see her doing it.

XQ148. Did you ever see anyone repair a run, holding it across two fingers such as the thumb and index finger, with a pivoted latch needle? A. I have since that time, yes, sir.

XQ149. Is that a practical method? A. Yes, it is.

XQ150. How does it differ from yours or the one that Miss Gibson demonstrated yesterday? A. Well, you are stretching the fabric, but you are 374
stretching lengthwise, you are not stretching it in all directions.

XQ151. The cross threads are separate, are they not? A. But as you stretch in that direction the run is contracting on the sides. In a very fine fabric, the run would be closed.

XQ152. Do you mean to say you cannot do it that way? A. I am referring to what you are showing me.

The Court: Between the thumb and forefinger, he said, in a very fine fabric you could not keep it open.

375

BY MR. WOOSTER:

XQ153. Can you do it on a sweater that you referred to in your patent? A. By holding over the finger?

XQ154. Yes. A. Why, yes, I should say so.

XQ156. Well, then, subject to the fineness of the fabric, it is possible to stretch a run across two fingers on the hand and it is possible while that run is so stretched to reloop with a pivoted latch

376 *Frank C. Stephens. Called by Plaintiff. Cross.*

needle? A. Yes, sir, it is. It can be done, but I would not say it would be a practical thing. You are only doing one length there.

The Witness: Depending on the length of the run. In doing that, the hook and latch would go through and function the way it did when Miss Gibson worked it yesterday.

I came to the States in December, 1922. I came to San Antonio, Texas. I did not then go to San Francisco and to see Mr. Losh. I came to New
377 York, I think in January of 1923.

Up to the time I got to San Antonio in 1922, I had gotten to the magnetizing end where the opening of the latch is and had not completed the holder. I was still experimenting on finding a better holder, even in improving the needle. By the time I got to San Antonio, I had used it over water glasses and over a hoop, an embroidery hoop. I do not remember any other articles that I did use. Those uses over the water glass and embroidery hoop had been in Mexico. My arrival in San Antonio was in December, 1922. I do not have with me either the drinking glass or embroidery hoop which I
378 used in Mexico. I have not got the needle which I used in Mexico, nor the needles I brought to the United States in December, 1922, having the guard on, not that I had at that time. I brought magnetized needles with me, but I have not got them now.

I did not make any writings or drawings concerning this invention in suit while I was in Mexico. I do not have any writings or drawings that I made after coming to the United States, that I recall now, most of those things I disposed of.

I got in touch with Mr. Hodges, who was the attorney in taking out this patent, through my attor-

ney in Mexico, I think; I inquired if he knew of some patent attorney in Washington whom I could go to, and he referred me to Mr. Hodges. I went to see him. I first saw him, I would say, in January, 1923—very shortly after I arrived. I had not written or spoken about the invention to anyone before I met Mr. Hodges in January, 1923.

The Witness: Might I qualify a statement I just made? I have just noticed a memorandum I made that covers my entire year since I left Mexico and arrived here in the United States 380
and went to San Antonio. At that time I went to visit my brother and sister-in-law, and when I came there it was about a month prior to that time.

Mr. Stephens: Your Honor, I have here a little pocket book I used as a diary. In this I have made a notation that I left Mexico City on December 15, 1922. I arrived in San Antonio on December 17, 1922. I left San Antonio for New York City on January 3, 1923. I arrived in New York City or, rather, I left New York City for Washington on January 16, 1923, arriving there, of course, immediately. On January 22, 1923, I saw Mr. Taylor at Mr. 381
Hodges' office. On January 24, 1923, I saw Mr. Hodges.

I never had any correspondence with Mr. Hodges. Whenever I wanted to talk to him about this patent I would go up to his office, and we would make it out at that time. I went to see Mr. Hodges and conferred with him in his office in regard to the patent. I never corresponded with Mr. Hodges one time that I recall in taking out this patent. As I said

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before, I would go up to his office and we would make it out at that time. I did not draw the drawings. I think Mr. Hodges had this done.

I do not remember just when I thought of the egg cup itself, but I was seeking to get a convenient holder and in doing that, if I recall, I used a wine glass with a long stem to it and I found that, while it lent itself to the use, there was an objection on account of the stem. There was no support, support for the hand, for the left hand. The wine glass did not give any support for the left hand. Now,
383 I conceived the idea of getting something where there would be a support there (showing egg cup), because to use that wine glass all day long, it would be very tiresome to use the ordinary wine glass with a stem of that kind without some support. I thought of that form (showed an egg cup); it just occurred to me that this is the shape of an egg cup. It lent itself to that form. I worked that out in the United States, I would say in 1923, the early part, a month or two after I arrived. I mean the form or shape of an egg cup. It was within one or two months, the first one or two months of 1923, the latter part of January, or February.

384 I do not have a record of it. After I got the thought, there was a first embodiment of it in physical form.

XQ194. Now, when was that first embodiment of it in physical form? A. I do not recall just what I did have.

I do not have whatever I had after I did not like the wine glass, I never kept any of those things. Threw them away. I do not recall whether I did or not tell Mr. Hodges about the drinking glass and embroidery hoop which I had used in Mexico. It is possible I did not tell him. I do not recall ex-

actly if I told him about the wine glass; that was tried in Washington. I do not remember whether I showed Mr. Hodges the egg cup or the wine glass. I think the first thing I told him anything about must have been about the time I was asking him to take out a patent. It must have been in the early part of 1923.

I did not make any notes about it nor did he make any notes about it at that time, not that I know of. I showed what I had to the patent draftsman. We showed him the egg cup. I did not make the patent drawings. Mr. Hodges had his drafts- 386
man do that. I gave Mr. Hodges instructions to go ahead with the patent application, after the date of the first meeting, I think. I did not tell him at the first meeting, it was later; I do not recall the date. I told Mr. Hodges about the egg cup before I told him to start the patent application. I am positive of it.

I could not say how many months before I filed that application of September 25, 1923 that I fully disclosed the functions of the egg cup type of holder to Mr. Hodges. I must have disclosed it to him to get out the patent.

(Recess 12 N. to 12:10 P. M.) 387

After recess.

BY MR. WOOSTER:

XQ212. Do you recall whether you stated positively, I do not myself recall whether you stated positively, that you disclosed the egg cup idea to Mr. Hodges or whether you did not, will you an-

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swer that question? A. I am under the impression I did. I do not recall.

XQ213. Don't you know whether you had an egg cup in his office demonstrating the whole invention to him? A. I am quite sure I had an egg cup in Mr. Hodges' office demonstrating it to him in about July or August of 1923, shortly before applying for the patent, as near as I recall.

XQ214. You have no record of it. A. No, I have no record of it.

XQ215. Do you know if Mr, Hodges has any rec-
389 ord of when you first showed him the egg cup? A. I do not know whether he has or not.

XQ219. Your recollection is that you told him about it and showed it to him at the same time? A. Yes, sir.

XQ220. Your best recollection of that is July, 1923?

The Court: July or August, 1923.

XQ221. July or August, 1923? A. Yes, the month of July or the month of August, 1923.

I do not recall if Mr. Hodges made a preliminary search in connection with my application for the
390 patent for this invention. We did get references about that after the application was put in, and I think that he must have searched for them, but as to any search before that, I do not recall whether he did or not.

The only information I had as to other needles and the prior art at the time of filing the original application, is what I had got myself in inquiring and by Mr. Losh, my associate, at the time. He had looked into it and we had tried to have an opportunity to and did find out what the prior art

was as far as we could. As far as I knew, there was no other method except the finger method.

Mr. Losh came into the picture about the same time. I arrived in Washington in January and Mr. Losh arrived there about the same time. He was my associate, not in the needle business before then, but in the mining business and various other enterprises. We were both together in financing.

XQ232. You told him then about those embroidery rings and drinking glasses and wine glasses and egg cups as they developed in your mind, did you not? A. I naturally told him of it and I 392 showed him about them.

XQ233. He is here present in person to be a witness? A. Yes, sir.

XQ234. So the chances are that Mr. Losh knew about all of these things before Mr. Hodges did? A. Yes, sir.

XQ235. And Mr. Losh knew more details than Mr. Hodges knew? A. He did before the application. Before we applied to Mr. Hodges for the application.

XQ236. So the chance is that you and Mr. Losh in a manner screened the invention before you gave it to Mr. Hodges to apply for a patent for you, is that right? A. I do not know what you mean by 393 screened.

The Court: Sifted it out, worked out all the mechanical details and made it workable.

By Mr. Wooster:

XQ237. Sifted out the immaterial things. A. Yes, sir.

XQ238. So you and Mr. Losh knew pretty well what you wanted before you went to Mr. Hodges'

office? A. We thought we did. We were not patent attorneys, therefore we consulted with a patent attorney.

XQ239. When you and Mr. Losh went to Mr. Hodges' office, did you talk about the egg cup? A. If I recall correctly, we did at that time.

XQ240. And did you know about the egg cup prior to your visit to his office? A. Yes, as I said, if I recall correctly we did at that time.

XQ241. It is not possible that the egg cup was thought of after the patent application was filed,
395 is it? A. No, sir. That was thought of before.

XQ242. Do you have any record that says that the egg cup was thought of before the application was filed? A. I never kept records of anything like that.

XQ243. But you kept records of when you went to places and whom you saw, that is just what you read off this morning? A. Yes, sir.

XQ244. You kept records of your travels, but no records of your dates of invention? A. I did not.

XQ245. Now are you positive that you and Mr. Hodges or somebody did not go over to the Patent Office and make any search of needles and repair methods before this patent application was insti-
396 tuted? A. Mr. Losh and I, further refreshing my memory, I think Mr. Losh and I went to the Patent Office to see about needles. We knew nothing about searching and we went over to the Patent Office and tried to find whatever we could on the subject.

XQ246. Did you ever go with Mr. Losh to the Library of Congress to look for that information? A. No.

XQ247. Do you know if Mr. Losh went there? A. I do not know. I do not think so.

I have looked over all the United States and various foreign patents that have been set up by the

defendants in various litigations, except the last ones you have put in. I did look at a few of those, but not all of them. I was not familiar with any of those before I filed my application, all of those patents and publications that have been developed and the various sources that have been brought to my notice since the patent application was started.

We, Mr. Losh and I, made up the specifications before we went to Mr. Hodges' office, if I recall right, but no drawings. I do not know where those specifications that Mr. Losh and I made up are now, unless Mr. Hodges may have them but we do not 398
have them. I do not recall if I got them back from Mr. Hodges.

By the words in the patent commencing at line 4, "other needles having been used", I meant the needle which I saw used by Mrs. Marr in Mexico, that was the only one I had ever seen; that was what I meant by that phrase.

XQ259. Now, in the next line you say: "They are not practical". Then you say further that as the method of use is a tedious one, I believe it is in quotes: "Further, that as the method of use is a tedious one". Is it your position now that by making a new method you have made the needle used by 399
Mrs. Marr practical in reknitting runs? A. I claim that with my method it is, while stretching over a cup, stretching of the fabric.

XQ260. I am not talking about stretching. I am talking about your phrase in lines, or rather your words in lines 4 and 5 of the patent in suit, and even on down to line 7, it does not mention the word, "stretched". A. Well, in that case I refer as to method by working over the finger, the finger method. I do not consider them as good as other needles in my method.

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XQ261. Do you, or do you not consider that you have shown how to make the needle used by Mrs. Marr practical for reknitting a run, please answer that yes, or no. A. Yes, sir.

XQ262. So now you can take the needle used by Mrs. Marr and make it practical with your method? A. I would not say exactly practical.

XQ263. Do you improve her needle when you use it by your method, is it a better implement? A. Well, the implement she used was more or less rough, and in my method I am smoothing it down
401 in order to prevent the catching of the threads, or fuzzing as we call it in repairing. I might change it in that way, but the structure, no.

XQ264. I still don't understand what you mean, do you mean that by using your method the needle which Mrs. Marr had, has become practical for reknitting, or is her needle still impractical? A. I never said it was impractical, it can be done.

XQ265. Well, you say here in your patent that her needle is not practical. Now, by your method have you made her needle practical? A. Yes, I would say it could be practiced. I do not see why not. Yes.

XQ266. Your answer is yes? A. Yes, sir.
402

BY THE COURT:

Q267. What do you consider your method to be? A. The stretching over a suitable holder and using a reciprocating motion through the hose.

Q268. You say you can take Mrs. Marr's needle and assuming it was nicely machined so it was smooth you could do that with her needle on an egg cup just as well as you could with yours? A. Well, I said it would be practical, it would be practically as good, yes, sir.

BY MR. WOOSTER:

XQ269. You make that last statement without any qualifications, or do you qualify it by some structure or holder or some particular way of manipulation of the goods? A. It can be used in the same method as I use.

BY THE COURT:

Q270. I still do not quite get what you mean by that. You mean that Mrs. Marr's needle can be used more advantageously with the egg cup than it can be used by the fingers, is that what you want to say? A. It can be used more advantageously by my method. 404

Q271. By your method, you mean stretching over the egg cup? A. Yes, sir.

BY MR. WOOSTER:

XQ272. And the second thing is: Do you mean that Mrs. Marr's needle is better used on an egg cup than if used on the human finger, but your needle can be used more rapidly than Mrs. Marr's needle because of your magnetic device in opening the jaw? A. I would say it could be used faster, especially with the little improvements such as the side guard. 405

BY THE COURT:

Q273. You mean improvements of that kind make it work better? A. Yes, sir.

BY MR. WOOSTER:

XQ273. You claim your needle is better than Mrs. Marr's needle, but that her needle can be used

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on the egg cup quite practically. A. Quite practically.

I could use my needle the way Mrs. Marr used her needle and I would say to better advantage than hers, by the finger method. It is my claim that if Mrs. Marr had used her needle on an egg cup punching through that way, she would come within this claim in suit, number 23. She was not using my method of stretching. If I did not give her any instructions about stretching she would still come within it, I should think so. It would be my
407 method. That is my claim 23; that is if she still used her own needle. If instead of using the egg cup, she stretched the goods across between her two fingers, I would say she would still come within claim 23, if she used the reciprocating motion, first the inserting motion and then the outcoming motion, the return motion or finishing motion and one the starting motion. There are two motions. The first motion is the inserting motion. The second motion is the finishing motion. I would say so, if she did that.

By reciprocating motion, I mean an up and down, the motion Miss Gibson used yesterday, in and out, a reciprocating motion. The insertion movement
408 starting it and the return movement finishing it. Two direct movements. And the needle in its handle could be moved in any way or position, I suppose, keeping them in rectilinear line; various angles in a rectilinear way; I would say it is still using my method if the needle goes in a rectilinear line at a right angle to the plane of the goods. The needle handle is shown at the side in both drawings, Fig. 5 and Fig. 6 of this patent. When the needle reciprocates vertically over the run or through the run at a right angle, the guard should-

ers off the next thread, or run as I call it, the succeeding thread, the cross thread "D" in Fig. 6 in the patent.

XQ291. I will have to ask you to do that on the egg cup with your needle and a piece of goods. As I understand it, the guard then would be at the side of the run and would have nothing to do with the cross thread.

The Witness: With the latch turned backwards toward you? Do you want me to do it in the perpendicular way? 410

XQ292. Yes, I want you to show what the guard shoulders off or does not shoulder off. A. I claim that that guard is shouldering off that next or succeeding thread, shielding it away from the point of the latch. That is shown when on the backward stroke, that next thread is sliding along the edge of the guard. I cannot see very well there—

XQ293. Have you the thread under the guard in holding the needle at a right angle to the plane of the goods, as shown in Fig. 5? A. Back of the guard?

XQ294. No, look at your picture a minute. Here the thread is under the guard against the shank. 411

Now, do that.

By the Court:

Q295. Is it now? A. It is between the guard and the shank.

By Mr. Wooster:

XQ296. Tell us how it gets there. A. It is pushed in between—I will spread that needle a little bit

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from the guard and you will see that the loop is following up the shank of the needle. It is not on the guard at all. It is between the needle and the guard.

XQ298. The thread goes under the point of the guard, does it not? A. Yes, it goes under the point of the guard.

XQ299. Then it slides between the guard and the needle shank? A. Yes.

XQ300. And finally that loop rests in the notch 5 under the latch, does it not? A. After it passes
413 over the end of the latch, it does.

XQ301. And at that time it is still pinched by the guard against the shank of the needle, is it not? A. Yes, sir. I could pick that out there. That loop is in there now. Now I will spread it. It is lying between the guard and the needle.

BY THE COURT:

Q302. If you do not have the guard there, what difference would it make, aside from being a little smoother inclined, by which the loop could run on your up-stroke? A. My idea is to shield—perhaps I can show it better this way first.

414 Referring to the portion of claim 34 reading "Guarding the latch in its open position to permit the closing thereof by the looped thread and to prevent the closing thereof by any other thread" I could show that by the height of the guard on the side.

If I would rub this across there, not catching that latch, the thread would slide along this latch and would not catch on that latch (indicating).

I do not have the needle from which the patent drawing were made. We made various latches some are long and some are short and some are with

guards. They are not all uniform, we make them by hand. Some may be a little sharper and some may be a little higher. We do not change the length of the guard. In this exhibit needle the guard seems to end considerably back of the middle of the hook, as shown in Fig. 1. It answers the same purpose. It is just a question of convenience. The patent does not show the same short guard as in this exhibit needle but it would not make any difference. I may have one. I will look. That is that far up (indicating). The length of the guard made no difference whether it goes up under the point of the hook 416
as in the patent or whether it stops way outside of the hook as in the exhibit, just so it did not protrude beyond the hook end of the needle. It does not make any difference.

XQ314. I understood you to say in answer to questions by the Court that Mrs. Marr's needle could be used with your method, is that right? A. It could, yes, sir.

XQ315. In the patent, you say at line 21:

> "It is impractical to use other needles with my method;"

By that, do you mean some needle other than that 417
of Mrs. Marr where you say "other needles"? A. At that time, I considered all the needles. I knew nothing but the needles I had seen at that time and I considered it more or less impractical for my method.

XQ316. I don't understand how you tell the Court it is practical to use Mrs. Marr's needle with your method, and you say in the patent it is impractical. Are you right today and the patent wrong, or is the patent right as of September 27, 1923, and you are wrong today? A. Well, I

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don't know just how to explain that, but I would say, what do you constitute practical? You mean for commercial purposes? I would not consider it as practical as my needle, by any means.

BY THE COURT:

Q. You mean it is possible to use hers for domestic use, if you want to do one stocking, but you don't think it is commercially practical to do it except in your method, is that it, is that substantially what you mean? A. That is substantially
419 what I mean.

I added to her needle the magnetism to open the latch for one thing, the guard also which I put on there, offset hook and offset latch, that was to facilitate the opening of the latch in addition to the magnetism. The offsetting of the latch facilitates the opening of the latch because in the back stroke when the loop is being cast off the end of the latch, it gives a slight flip as I would term it, and you pull it through and the tightness of the loop thread would cause a kind of flip, as I would say, off to the side instead of the loop thread going straight off, it goes off to one side and gives it a kind of a flip.
420 I don't know how else to explain that except by calling that turn a flip. This is true when you hold the needle as in Fig. 5 with the guard on the bottom.

XQ325. The guard is on the lower side, as you hold it there on Fig. 5. I was rather under the impression it was on the lower side most of the time when Miss Gibson was using it yesterday.

The Witness: Here you have the same effect in the position I am holding it, I would say (illustrated by the witness).

BY MR. WOOSTER:

XQ326. Now, do it and roll your handle over so the guard is on the lower side of the shank 2, as shown in Fig. 5. A. In that position? (indicating).

XQ327. Roll your needle over so you get the position like Fig. 5. A. It rests on the side.

XQ328. Isn't that part of the function of the guard, Mr. Stephens, to act like a runner riding on the side of the run?

The Witness: It does act as a runner, but that has no bearing for use in the running of the run. If there was no guard there at all, the needle would slide down the same angle. 422

The Court: You mean that is not the purpose of the guard? A. It is not for that purpose. I am using that guard to shield off the next forward thread—

The Court: The purpose of the guard is selective apparently, that is what you want to say and it has nothing to do with the runner effect?

A. Yes. 423

(After adjournment.)

FRANK C. STEPHENS, resumed.

I do not magnetize the guard in my commercial needles. I magnetize the hook and latch and the guard becomes magnetized. I would say that it has the same polarity as the hook and latch. Where the guard is not originally magnetized, it does not help

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to repel the latch. After the guard thus acquires magnetism, it would not help repel the latch from the hook, the needle acts just the same without the guard. I found that out by experience. I never made or used in commercial operations needles without guards. I never put out or used in commercial operations needles which did not have a hook and latch magnetized.

The statement commencing on line 24, page 1 of the patent, "With other needles used for a similar purpose, the latch or bridge must be forced open
425 by pressing against the thread or fabric and, in operation, can be opened in no other way" described the needle Mrs. Marr had and with her method; in her method, the loop thread opened the latch when the needle was pushed forward. She forces the latch into the forward thread to get that thread in, but the opening of the latch is by the loop thread that is in the hook. I mean the front opening in the quoted clause. To get the objective thread into the hook, she pushes the latch point against that thread to get it into the hook. It opens the latch after this loop itself is already in this position (indicating). As she pushes forward it opens the latch. There are two kinds of openings, one, to get the cross thread
426 under the point of the latch and over the top of the hook, and secondly, throwing the latch back. The statement in the patent that it "can be opened in no other way" refers to getting the thread under the latch. Mrs. Marr's needle caused the cross thread to do that in her method, that was the only method I knew of.

In my needle there is sufficient magnetic repulsion not to require the cross thread initially to move in and contact with the latch because the latch would be there in an open position; my needle is ready. Why I preclude stabbing the thread with

the latch is because the latch is thrown out of the way. The words in line 34, "open at the proper time and greatly simplify the work" refers to two methods; it does help in my method where I am stretching over a cup. It simplifies the work to provide a means to keep the latch from stabbing the cross thread on the final motion. That is what I mean in lines 34 and 35. Mrs. Marr's needle did not have that feature; and her latch was likely to stab the cross thread on the forward motion; in line 39, "the thread to be looped" means the cross thread to be looped, the cross thread in front.

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Referring to the words following that: "thread to be looped must be forced into the hook while the latch is so closed", Mrs. Marr's method was the only method I knew of; I never saw anything else. With my needle and in my method, the cross thread never had to do anything to the latch to go into the hook. The latch is opened and I do not have to push the next thread under my latch. I regard that as an improvement over Mrs. Marr's needle.

The sentence commencing at line 40, "This is very unsatisfactory, and unless great care is used in the operation, the thread holding the latch closed will slip off on the needle and allow the work to unravel" referred to what I saw happening with Mrs. Marr's needle and to the method that I saw. In my method I use a guard to prevent that, but in using her method over the finger, the guard is not present. I do not see, where the magnetism would have anything to do with it. I do not think that function is aided in any way in my needle by the magnetism causing the latch to open.

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At page 1, line 40 I am referring to the loop that is holding the latch closed. If by any little movement that is slipped off and cast off the end, that would be called a slip and drop. The slip would

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occur because the hook had not caught a cross thread; that would cause the slip and you have to be very careful to get the next thread in the hook.

"With other needles and their method of use", one thread holds the latch closed; the other thread is in the hook, and I state, "This is very unsatisfactory unless great care is used in the operation, the thread holding the latch closed will slip off the needle and allow the work to unravel". The loop that is holding the latch closed, if that is cast off, it very often releases the whole stitch when it runs
431 back. I referred to the fact that the fact that the loop cast off causing the needle to slip would not happen if the hook is properly caught crosswise. The meaning of those two sentences is aided by the succeeding sentence, which says: "That the latch forces the thread to be looped (cross thread) into the hook". (Lines 44 to 48 inclusive).

I claim that my latch reaches forward and forces the next thread into the hook. Mrs. Marr's needle would do the same thing, if held in the same position that my needle would be held. It is identically the same needle, as far as the latch and hook are concerned. A given mechanical instrumentality or machine such as this latch needle functions the
432 same way when it is used the same way.

XQ373. Now, over at another place in your patent you say (line 41, page 2): "It also has the hitherto unknown purpose of reaching for and grasping and forcing into the hook the thread necessary to be picked up in order to continue the looping process"; is that your way of stating that while the needle as used by Mrs. Marr had the capacity of throwing the thread into the hook, she did not know it had? A. I state that the only method that I knew was the old finger method. In that case,

using the finger method, the latch would not reach forward and grasp the other side. I am referring to hitherto unknown methods.

XQ374. Are you not saying that Mrs. Marr's needle had a capacity of throwing the thread into the hook which she did not know it had? A. She did not know it had it, because she did not use it in that way.

XQ375. But you agree that her needle did have that capacity? A. It did have that capacity if used with my method.

XQ376. And you are the one that found that out? 434
A. Yes, sir, that is what I considered.

XQ377. And that is the basis of your claim to invention here; that you found out that capacity? A. And that method of reciprocating, I am saving two motions, I am going up and down, whereas she is using what I call four different motions.

I could turn Mrs. Marr's needle going through the goods so it would not touch the cross thread at all. I could use Mrs. Marr's needle going through the goods the way I do, so that the latch will not cast that cross thread into the hook. That position would be almost turning the hook end clear around so that the latch would not fall on that thread, turning the hook completely to one side, where the 435
latch would not strike on the thread. That could be done, but you would not be able to loop one cross thread onto another. I could use Mrs. Marr's needle to loop cross threads in a run without causing the latch to throw the cross thread into the hook as stated at page 1, line 44 and page 2, line 41, by holding it almost in a horizontal position and then it would be a question of whether the latch and hook are meeting at almost the same point. I think I could show that by demonstration probably bet-

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ter than I could explain it. I will first get my start which will be the running loop. Now, I am going down through the fabric and the running loop is back of the latch. Now, I reverse the movement, the loop forcing that latch downward on the next thread. That next succeeding thread is bent slightly as that latch falls on that; I refer to the next succeeding thread in front of the latch where the latch is now falling on that. I am trying to hold my needle back here and pulling back, and the latch pushes that thread downward like this (indicating). That is a single run. The latch drops when you push it, forcing it into the hook. (Witness operates it straight up and down, and then in a vertical plane at an angle of about forty-five degrees). The loop going over the latch brings the two together as it goes along, the latch and the shank. In what I just did, the cross thread is pinched as between the jaws of tweezers between the latch and the hook; it has that same effect, but I am holding back the needle here. I can probably show it without going back of the latch, I will bring that hook out there; it is not catching the next forward thread. It is not open. If I hold it at that same angle, it is not catching the next thread. Now, I will go through and hold the needle at the same point and bring the latch down on the same thread and you will see the thread bent down; the latch is forcing that thread down to that hook. The thread in front is bent as that latch comes down. This cross thread in front is in the same plane as the rest of it. As the latch falls on the next succeeding thread, it bends. Now, if I had no latch on there at all, and I would bring that through, the hook is not caught. I will try to bring it through the same angle, the latch will close on that thread and therefore it is pushing it down into the hook.

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This loop thread is causing the latch and the needle to come together as in a pincher, but the pressure I am holding the needle back here would not permit the hook end to come up. In other words, the latch is bringing the thread down to it. The curving of the hook laterally around the latch, as shown in Fig. 7, does not aid in that thread casting operation just explained. I think it would have the opposite effect, because I bent often as shown on the left, and if I was coming up, the point of the hook would be to one side and it would be less liable to aid. What I was doing here was bringing 440
it forward. It can be done either way. However the slight amount I did it would not make much difference either way.

My description of operation commencing at line 85, page 2—"The operator at first inserts the magnetized hook 1 through the last loop (a) of the ravel and run and beneath the next thread (b)," this was the same as Mrs. Marr did; she got the last loop. It is the natural thing to catch the last loop. That is the only one that you can catch. In this description I am showing the last loop. I think it is the natural thing to do, to catch the last running loop in order to repair a run; that would be the 441
only way I would know, would be to run down the run. I would have to get that last loop in order to take it up the ladder. I have an improvement over Mrs. Marr's way of picking up that last loop, we insert in many cases the needle back probably three, four, sometimes six loops back. That is done in my commercial practice. I do not call it stabbing—catching the loop. I think I would call it inserting (demonstrating). There is the running loop. I could insert the needle down here, which is often done in the same line, letting that loop come back,

442 *Frank C. Stephens. Called by Plaintiff. Cross.*

and I have got it on the shank of my needle. Instead of trying to get or catch one little thread, we often do that—aggravating the run to meet the hook. My method of punching through back of the loop is easier than picking up the last loop itself after you run a ways and slipped as they call it and go back. Your loops are slightly spread and it is very easy then to run your needle through, and in her method, over the finger, there is no necessity really—you are losing time by catching back. The natural thing is to catch the first loop. You can, if
443 you catch the loop over the finger before you catch the loop. I think I can show by demonstration that the picking up of the loop does not affect the run. I have got that stocking perfectly loose across my finger, I slightly stretch that; the loop had not run back, therefore I can catch that thread without running it back.

We can catch the loop the same way that Mrs. Marr did; I do not know but that I have seen some of our operators do it. The difference in Mrs. Marr's handling or catching that loop is that she would turn the needle, the body of the needle away from me, the hook down and the point toward me. She would catch the run by a hook, put the hook
444 in the run and then turn the needle back. In our handling we simply insert at or near the point where we want to go in, we do not always catch that in that way, although I have seen some of our operators do so.

I would say that Fig. 4 of this patent shows or nearly shows the situation at the time I have caught this last loop for the reason that I always have the latch open when I catch the run loop on the latch.

In Fig. 6, the latch is finishing the back stroke, as I call it. The latch should have been shown open

in Fig. 6. I cannot interpret that. I am not a patent expert. In catching my last loop, invariably my latch is open and back. Fig. 6 is a finished loop and the needle is now ready to go down again. That is not the original catching of the loop. When I have caught the last loop my latch is still open, but the loop I am catching is in the hook. I have caught my run or loop, that is in the hook when the latch is open. Then I push it down until the loop is back of the latch, as stated in line 90, page 2; "Needle is then slid forward until the loop (a) slides over the free end of the latch." The forward 446
motion should have put the loop not only back of the latch in its open position but also between the guard and the shank. It is between the guard and the shank. The needle is the same as the shank. At that time the loop is in notch 5—the notch back of the shank. In Fig. 4 the thread (a) is back of the latch at that time. The notch part is back of the end of the latch. The thread is also between the guard and the shank. Fig. 4 is the end of all the forward movement of the downward stroke. It would be forward in the patent; that would be the end of the forward movement. In Fig. 4, I am ready to come back. Fig. 5 shows the needle coming back
and catching the next thread to be pulled through 447
loop (a). In that figure I would say the thread (b) was inside of the hook. Fig. 5 shows the position of the thread (b) after the latch has reached for, grasped and forced thread (b) into the hook.

XQ448. Now, as I understood you this morning and as Miss Gibson was operating yesterday, the handle of the needle was not swung around from the position shown in Fig. 4 to that in Fig. 5. Will you explain how the needle can swing from the position shown in Fig. 4 to that in Fig. 5 and you

448 *Frank C. Stephens. Called by Plaintiff. Cross.*

might also demonstrate that. A. I am not a patent expert, but I would say that these drawings are made to show that operation.

XQ449. This does not show the way that you and Miss Gibson did it. A. I did it the regular way.

BY THE COURT:

Q450. What does it do here? A. Why you can see the thread on the side. If that were pulled over there you would not be able to see the thread (a) and the position of it and the position of the latch
449 and hook. That could not be shown with the needle held this way.

Q451. You could not? A. No, sir.

BY MR. WOOSTER:

XQ452. Do you agree that the pictures in the patent show different handle positions at different angles to the run? A. Yes, the handle, I mean the patent shows the handle in different positions.

XQ453. Does the patent show the handle in different angles to the run? A. Yes, it shows three different positions.

450 XQ454. Three different angles? A. Yes, sir, three different angles or positions.

XQ455. Do you say that these angles are right as shown in the patent or are they wrong? A. Insofar as I can see, I would say they are right.

XQ456. You did not do that this morning in any of your demonstrations? A. I do not remember whether I did all of them.

Court adjourned until Monday, March 23, 1931; 10:30 A. M.

After adjournment. 451

Mr. Hodges: I have here a letter which Mr. Stephens brought in from the firm of Taylor and Howatt of the City of Mexico, dated December 14, 1922. I have it stamped "Received January 23, 1923." Mr. Stephens was in on that date and I was out of the City.

In my diary dated January 24, 1923, I have this entry: "Mr. F. C. Stephens in from Mexico with needle for picking up runs in stockings."

In the diary on February 10, 1923, I say: "Mr. Frank Stephens in with Mr.—."

On March first: "Mr. Losh and Mr. Stephens were here." 452

On the 12th day of March, 1923, Mr. Stephens was in again.

Mr. Hodges: I will offer the file of an application Anne H. deMarr as Plaintiff's Exhibit No. 7.

(Folder marked Plaintiff's Exhibit No. 7.)

Mr. Hodges: I now offer this letter of introduction received January 23rd as Plaintiff's Exhibit No. 8.

(Marked Plaintiff's Exhibit No. 8.)

Copy of letter report to Mr. Stephens on March tenth on denial of deMarr application offered as Plaintiff's Exhibit No. 9. 453

Data in Mr. Stephens' handwriting from Mr. Stephens submitted to Mr. Hodges as the basis for the deMarr application, received by Mr. Hodges on February 1st, 1923, offered as Plaintiff's Exhibit No. 10.

Original draft of deMarr application offered as Plaintiff's Exhibit No. 11.

Office file wrapper of the deMarr application offered as Plaintiff's Exhibit No. 12.

454 Copy of letter to Commissioner of Patents for copies of patent, dated March 10, 1923, offered as Plaintiff's Exhibit No. 13.

Certified copy of record of Stephens' original application Serial No. 664,720, filed September 25, 1923 offered as Plaintiff's Exhibit No. 14.

Sheet of sketches in Mr. Stephens' writing offered as Plaintiff's Exhibit No. 15.

Two sheets with pasters thereon in typewriting found in the file offered as Plaintiff's Exhibit No. 16.

Another sheet of pencil writing, notes by Mr. Losh, dated on the back; "Received November
455 12, 1924," referring to the Stephens application No. 664,720 offered as Plaintiff's Exhibit No. 17.

Sheet with patent numbers on it offered as Plaintiff's Exhibit No. 18.

File wrapper of Stephens application offered as Plaintiff's Exhibit No. 19.

Copy of record of reissue application with drawings offered as Plaintiff's Exhibit No. 20.

Copy of list of claims marked "Revised for reissue" offered as Plaintiff's Exhibit No. 21.

Typewritten copy of claims, 20, 21 and 22 marked "N. G.," signed by Frank C. Stephens, Washington, D. C., February 27, 1926; wit-
456 nessed by Robert I. Nevitt, offered as Plaintiff's Exhibit No. 22.

Draft of claims a, b, c, d, e, f, g (also marked 6 to 12), offered as Plaintiff's Exhibit No. 23.

Two sheets on rough paper showing sketches and a note dated 5/18/26 and signed by J. P. S., who is John Preston Swecker, offered as Plaintiff's Exhibit No. 24.

The file wrapper of Stephens' reissue offered as Plaintiff's Exhibit No. 25.

FRANK C. STEPHENS, recalled.

CROSS EXAMINATION BY MR. WOOSTER (continued):

My memory being refreshed with the papers produced by Mr. Hodges, I believe in my previous testimony I did say I had not had any searches made, or had not seen any patents, and really I had forgotten about having seen the Pogson patent; in most of my statements I have always looked back to the conception of my patent more than to the time of the application. I had seen the Pogson and Walker 458
patents, after having refreshed my memory, I think I had seen them about March.

I looked over a part of the papers that Mr. Hodges produced, not all of them. I do not know whether any writing in those papers referred to the method or not; if I could read it I could tell.

XQ462. I mean the hand written memorandum bearing on claim 23 of the patent in suit similar to the hand written memorandum you made out for Mr. Hodges about the DeMarr invention. A. I have seen the written document this morning, written in my handwriting. I think that referred to something about the specifications or something to that effect.

I can produce the original Mexican patent of Mrs. 459
deMarr's invention if it is desired. I thought it was of no use and did not bring it along.

I do not recall writing out, myself, and giving it to Mr. Hodges, any method of reknitting and claiming it as my invention. Mr. Losh and I together did. I think Mr. Losh wrote out a method. I do not know where that writing is. I can understand the original claim 3 of the DeMarr application, Exhibit 7. I acknowledge that method as not my invention. I acknowledge that method to be prior to

460 *Frank C. Stephens. Called by Plaintiff. Cross.*

my invention or claim 23 of the patent in suit; this is not mine, this is in the deMarr patent.

I agree that the positions of the needle shown in Figs. 4, 5 and 6 of my patent are not parallel. The fabric is the same in each figure as to the other loops outside of those on the needle; they vary as to the degree of reknitting shown. The fabric is not moved from Fig. 4 to Fig. 5 to Fig. 6, in none of them. The needle is moved. The needle had been swung to a different angle to the run in all of figures 4, 5 and 6. I really could not say why the
461 angle of the needle relative to the run is changed in those three figures. I would not call that a mistake. It is simply showing the method of operation.

We hold our needle in so many different positions up to flat against the fabric in this manner (illustrating). We hold it in many different angles off of the plane of the fabric.

XQ486. (Interrupting.) Do you agree that with the non-parallel needle positions shown in Figs. 4, 5 and 6, there is a difference between the substantially parallel needle positions which you and Miss Gibson used in demonstrating? A. Well, we use the needle in so many different positions and angles, I could not say.

462 XQ487. But neither you nor Miss Gibson moved the needle out of parallelism with this in the relooping operation, that is to say you both reciprocated that needle in a right line and you did not swing the handle in a gyratory or oscillatory motion upon the hook as a center? Neither you nor Miss Gibson moved the needle out of parallelism with this at any position of the relooping operation; your patent drawings show the handle oscillating or gyrating upon the hook as a center, and your patent drawings show three non-parallel needle

positions in making one loop. Will you state what the reason is for showing these non-parallel handle positions in the patent? A. I know of no particular reason why it should have been done. It never occurred to me before. I would say that the needle is rotated there in the figure to be able to show the threads clearer on the sides of the needle.

I do not see where it would cloud it much if those needle positions had been shown parallel to each other in those figures, 4, 5 and 6. I do not know as it would be any better to have shown the needle positions parallel; I do not see as it made much difference, myself. I made these drawings or had these drawings made. I always thought they clearly showed the method I was indicating in my specifications. 464

I think the motion indicated here the other day is the motion shown by these drawings. I do not see that it will make any difference either way. These drawings were supposed to show a certain thing, and it is apparent that they show it, to me. I do not understand they will show it to anyone else, but they certainly show it to me. I think that these drawings very clearly show the way we intended for this to go. I do not say that I directed the draftsman exactly to make them just this way, because I felt he knew what he was doing and that was his business. To my mind, these indicate just what he wanted to show, and they indicate just what we intended for them to do. 465

They were intended to show only a reciprocating motion. It seems to me very clear in my mind. There is another thing. I cannot see how this position could be accomplished by gyrating around here, around and around; you would not get in there. I do not see how you would get anywhere. It is this

466 *Frank C. Stephens. Called by Plaintiff. Cross.*

motion we have here; I would say, this is the motion that we have done, this reciprocating motion.

I can not do that rolling motion in an ordinary operation. It could be done. We insert that in the first line, we may change that from this position to a number of other positions.

I mean by the reciprocating method, the movement of a needle and its handle in normal position along the longitudinal or lengthwise axis of the needle extended or straight line reciprocation.

According to the showing in Figs. 4, 5 and 6, the
467 needle has oscillated or gyrated in going from one to the other. I would say that the downward stroke would be held as is shown in Fig. 6. Fig. 4 is the original start and Fig. 6 is the finish of it. Fig. 6 should show the latch open. Starting the loop caught up in Fig. 6 and the latch open and the needle at the angle shown in Fig. 6, the needle would be pushed down through the fabric until the loop had passed back of the latch again, as shown in Fig. 4. As the drawings would show, the movement of the needle is more of a longitudinal motion and brought back to a different position. In Fig. 6 the loop is pulled through and is the finishing loop. Now, I would go downward through the fabric,
468 bringing my needle more in alignment, as shown in Fig. 4, and push the needle downward again. I bring the needle downward before I push down. I think that before starting to go down from the position shown in Fig. 6, I swing the needle more in alignment with the run, as shown in Fig. 4.

XQ509. Mr. Stephens, do you agree that each of the positions of the needle shown in Figs. 4, 5 and 6 satisfy the wording of the claim "holding the device laterally out of alignment with the run"? A. I do think it shows it there.

I would not say that Fig. 4 is any the less lateral than either Fig. 5 or Fig. 6. I would call it the same angle Figs. 4, 5 and 6 show this needle position identically laterally of the run. It is off the plane of the fabric, while I have got it at different directions that way, the needle is held at an angle off of the plane of the fabric, and I say they are all more or less the same angle off the plane. I do not see that Figs. 5 and 6 are more laterally out of alignment with the run than Fig. 4. When I referred to it as laterally off the alignment, I meant any angle off the plane of the fabric. It might be 470 held there, or in paralleling the run—not paralleling the run—any angle off the run in any direction is what I mean. I meant laterally out of alignment to mean any position or angle off the plane of the fabric. That is what I mean. My contention is that any direction, any way off that plane is covered by the words "laterally out of alignment with the run or ravel."

I do not find it in the specifications. It is in the claim. I do not find the word "lateral" used in the specification, but I do in my claim.

I do not find anything directly in the drawings which says that the angle of the needle to the plane of the goods changes in going from Fig. 4 to Fig. 5 471 to Fig. 6 and back to Fig. 4. I do not think that we used the word "reciprocate" or "reciprocation" but we indicate what we call the reciprocating motion, one stroke from the start of the operation and one finishing it. It was indicated in the specifications, commencing line 87, page 2:

> "The operator at first inserts the magnetized hook 1 through the last loop 'a' of the ravel or run and beneath the next thread 'b.' The needle is then slid forward until the loop 'a' slides over the free end of the latch or bridge 4."

472 *Frank C. Stephens. Called by Plaintiff. Cross.*

Then in line 98:

"The needle is then pulled back in the reverse direction, the loop 'a' sliding back against the latch or bridge."

Also in line 112, page 2, starting:

"The operator now continues to pull the thread 'b' which is held tight by the closing of the latch or bridge 4 against the hook, until a loop 'c' is formed in the thread 'b' and it is drawn through the loop 'a' as clearly illus-
473 trated in Fig. 6."

Also in line 18, page 3:

"After the loop 'c' shall have slid over the end of the latch or bridge and beyond it, the needle is reversed or pulled back, during which motion the latch reaches for and grasps the thread 'd,' forces it into the hook, just as it has previously done with the thread 'b' as shown in Figs. 5 and 6, and as thread 'd' is pulled back the loop is formed in it, the guard, in this operation performing its function as heretofore described."
474

I say that would indicate a reciprocating motion. I do not find anything else at the moment.

By the word "forward" at page 2, lines 91 and 96, and page 3, line 14, I mean the downward stroke, down through the fabric, in the direction of the point of the needle.

I have not any distinct recollection that I did disclose the egg cup to Mr. Hodges before I filed the original application in September, 1923. I am sure I did. I cannot remember the exact date when I dis-

closed it to Mr. Hodges, but I think it must have been in July or August, shortly before we made the application, fully three or four months after the deMarr application had been filed, and sometime after I had seen the Pogson and the Walker specifications.

I say in my patent that I stretch the stocking in all directions by manipulating the fabric. I do not use the word "all" in the patent, in all directions. In my direct testimony I did say "I could manipulate the hose and stretch it in all directions". In the patent I say "stretching"; I use the word 476
"stretching" but I do not say "stretching in all directions". I do not think I say "stretching in all directions" in the patent, but I do say "stretching" over. I am stretching in all directions. While stretching, I would interpret that in all directions. If I say to stretch, that necessarily means to stretch in all directions. I would say that all I needed to say in my patent was to "stretch" and then people would understand that I meant to stretch in all directions.

With an embroidery frame ,when a thing is put on an embroidery frame, it is stretched in all directions in the frame, both lengthwise and sidewise. I 477
agree that I can stretch in all directions with an embroidery frame. The objections to an embroidery frame were other than the stretching.

XQ544. When a piece of a stocking with a run in it is stretched on an embroidery frame then would you say that it satisfies the description of stretching that you give in your patent? A. I used the word "stretching"; now, in an embroidery hoop it would be permanently stretched. I refer to stretching as—

478 *Frank C. Stephens. Called by Plaintiff. Cross.*

XQ545. Oh, you mean something else besides in all directions, where you say "stretching", is that it? A. I mean by the word "stretching"—

XQ546. Please say it all in one answer. A. Stretching in any direction, while holding over a holder.

XQ547. Is an embroidery hoop such a holder? A. No, I consider an embroidery hoop, that the material that is put over there is permanently stretched, clamped in between. There is one hoop over another. That is, one part of the hoop placed
479 over the other, with goods in between.

One of the troubles was the escape of errant runs between the double hoops going into it. That is one of the things that I mentioned. You would get the runs going over into the rim of the hoop if you put the hook into the last loop before you clamped the goods in the embroidery hoops, if you have more than one run. You can put pins in the way, but as I stated before, it is not the practical way to do it. I do not show anything in my patent about using pins to stop multiple runs that I know of. The claim only deals with one run, but we call one run the same as if it has many runs, we call it one run. But I only knit one run at a time. Multiple runs
480 are brought in for the reason that the term is used many times, but not in the patent.

I do not use the word "stretch" in that part of the patent starting at line 87, column 2, which goes on down to the first column of page 3.

The order of the operations is that I first stretch and then I insert the hook. I do not see that I have left out anything except the word "stretch". I have explained here how it is stretched, then I carry on with the insertion of the needle, carrying through the operation. I say that I first stretch

over the holder, then insert the needle and then reloop. That is all that I refer to in this. That first stretching over the holder is the first step in claim 23.

I said in my direct testimony that after I got the needle inserted in my practical method, I put some more stretch on the goods. That does not come out in claim 23, but it would occur during that act of stretching. I found that out before I filed the original application on September 25, 1923. I did not state that two kinds of stretching in the patent. I used the word "stretching" all together. "Stretching" means one stretching over the holder to get the needle into the last loop, and after you get the needle in the last loop, another stretching then occurs before commencing the relooping. I would increase the tension and stretch more as the downward stroke commences. 482

The statement that "In manipulating the hose you can immediately release the tension" is not made in the patent, that I know of. I know of nothing in the patent about either manipulating the hose or releasing the tension.

CROSS EXAMINATION BY MR. MORRIS: 483

I think Figs. 4, 5 and 6 of the drawings show the meshes or loops of the fabric enlarged by comparison with the needle. In Fig. 4 had the meshes not been enlarged, I think the hook end of the needle would be down directly under the thread "d"; directly under "b" and "d".

In illustrating the step of claim 23, line 65 of page 4 of the patent "catching the next forward thread in the hook while the loop is being pulled over the latch", I must insert through and get that back of the latch, then the position of the loop on

484 *Frank C. Stephens. Called by Plaintiff. Cross.*

the shank of the needle is now immediately above the end of the latch when the latch is fully opened. Then I reverse the movement, pulling upwards. This loop is now being pulled over the latch, closing it, and causing the latch to close over the thread. It is while that movement is going on that the next forward thread is being caught in the hook and pulled through the other loop.

CROSS EXAMINATION BY MR. WOOSTER (Continued):

485 The clearance afforded by the notch or recess 5, referred to on page 3, column 1, commencing line 30, permits the needle to be held closer to the fabric, but the main object is to lessen the size of the loop passing over the end of the latch. At the time I filed the original application, I did not contemplate that the needle could be used close to the plane of the fabric. The notch really has no effect in that connection. The intention was to let the needle work closer to the fabric, and at the same time not have so much tension on the fabric or the loop passing over the latch. At that juncture, the latch is considerably above the shank. I wanted to lessen the tension there. I also wanted to allow
486 the needle to work closer to the fabric.

CROSS EXAMINATION BY MR. MORRIS (Continued):

I do not see anything in the patent that shows that the hook of the needle is at the end of its forward movement, either below or above the second rung of the ladder beyond the loop through which the needle had been inserted. There is no disclosure in Fig. 4 as to the whereabouts of the hook of the needle with respect to the thread "d" at the end of

the forward movement of the needle. There is no indication in the patent to show that.

Illustrating the process showing the DeMarr operation, I am now stretching this fabric over my index finger with the run held over the index finger. I am now inserting the hook into the first run or raveling while holding the needle pointing away from me. I then reverse the handle holding it in a position towards me. I push the needle forwardly. In doing that, I press down the flesh of my finger very slightly, possibly. I would say it is not necessary. I have a clearance in mine. Now, I push the 488
handle under the next succeeding thread and push the needle forward until the first loop passes back of the latch, being careful not to let the second thread pass. The movement is now reversed and the loop back of the latch will close the latch on the next thread, enclosing it in the hook and pulling it through the loop. Now, I repeat it. I am pushing the needle forward under the next succeeding thread, and while working over the surface of the hose, I allow that loop to pass back of the latch, being careful not to let the second one pass back of the latch. I then reverse the movement and the first thread over the latch will close the latch on 489
the next thread and enclose it in the hook. I then pull that thread through the other loop making a new loop. My right hand is comfortable during that operation.

XQ603. Would it be the Mexican method if you had to dip the needle somewhat to get under that first thread; if you did dip the needle somewhere under that first thread, instead of keeping it rigid and you did not let it depart one iota from the plane of the fabric? A. It would not make any difference.

490 *Frank C. Stephens. Called by Plaintiff. Cross.*

XQ604. All right, let us see you repeat that process; skip a little bit, fish a little bit for the second thread. Get comfortable. Move up the handle end of your needle say 10 degrees out of the plane of the fabric. A. I would not call that my method.

XQ605. Go ahead and raise this a little and fish for that second thread, instead of trying to sight for it. A. I would not fish for it. I turn my handle to the side and fetch it that way, and turn the needle back.

XQ606. In that method it was essential that the
491 end of the handle of the needle should always be in the same right line which, if extended, would run through the plane of the fabric, and in operation it was not practical or possible to handle the needle comfortably. A. It would be handling it comfortably; that little turn makes no difference.

XQ607. But you would not lift the end of the handle at all, 2 degrees, 5 degrees, or 10 degrees when you were slipping it under the next thread in the Mexican method? A. I would not.

XQ608. Suppose in the practical operation of that method, would that end of the handle be held absolutely, geometrically as you hold it in the same
492 plane—that is all, you need not answer. A. You would naturally hold it below. There is a curved surface there; you hold it below instead of above.

XQ609. But you would not move the outer end while you were moving the needle itself; you would not move the outer end of the needle out of the plane of the fabric while you were moving the needle? A. You may slightly.

XQ610. What is the limitation in the Mexican method, is it 2 degrees, or 10 degrees, or what is it out of the plane of the fabric? A. Not over 2 or 3 degrees, I would say.

BY THE COURT:

Q611. Two or three degrees? A. Off the plane. It is very slight. I do not see any reason for doing it at all.

I did not get a patent for the egg cup as used in combination with my method, only porcelain dishes, if you call that a porcelain dish. I did not get a patent nor make application for a porcelain dish as an article. I did not apply for one. I did not file an application showing an egg cup. I do not recall whether I did or not for interference with the Howe 494
patent. I may have included an egg cup; I do not recall.

I do not recall whether or not the egg cup was shown in the application filed for interference with the issued patent to Howe. I never applied for an egg cup patent at any time, or any holder. I did file an interference with the Howe patent. I was the inventor in that application. It was filed after the application of September 25, 1923.

FRANK A. LOSH, a witness on behalf of the plaintiff, being first duly sworn, testified as follows: 495

DIRECT EXAMINATION BY MR. GILLIGAN:

I am the President of The Stelos Company, Inc. My residence is in Washington, D. C. I have been associated in business with Mr. Stephens for a period of more than 20 years in both Mexico and the United States, very closely associated in various enterprises on what we call a fifty-fifty basis, equal ownership.

496 *Frank A. Losh. Called by Plaintiff. Direct.*

In July, 1922, when I was living in California, I received a letter from Mr. Stephens in Mexico City telling me that he had made a discovery which he thought was of value, and asking me to come to Mexico City to talk with him about it. At that time, I did not go. Later, in November, 1922, I received word from him that he was in the United States, and in January of 1923, being still in California, I received a wire from Stephens in Washington, asking me to meet him in New York and to let him know when I could be down. I wired
497 back that I was coming to Washington to see him and arrived there on the 8th day of February, 1923. Mr. Stephens then disclosed to me what he had. He disclosed to me the needle, the latch needle which he had developed for the repair of hosiery together with the method of operating it.

In order to satisfy myself as to the value of the invention, I investigated the subject of hosiery repair in Washington first and in other places. I found there was no store in Washington that had hosiery repair service, except one who accepted hosiery of a certain brand for repair, but sent them to New York for the work to be done. I investigated
498 in various other cities and found there was no system in use anywhere, excepting the finger method. I found that in use in one of the hosiery companies in New York. I returned to San Francisco and purchased a needle. I made investigations on the way back to San Francisco, in Chicago, and Kansas City and also in San Francisco when I returned.

I found one store selling needles to the public for repair of runs in knitted goods. I purchased one of those needles to find out what it was and how it worked. I had a demonstration made, which was over the finger, with a latch needle, which confirmed

my belief that Mr. Stephens had discovered something of value.

I had taken a needle with me to California to experiment with and I concluded that the embroidery hoop was not a satisfactory holder, and sent word to Mr. Stephens to that effect. He replied asking me to try a common water glass. That was in March or the early part of April, 1923. I was in San Francisco at that time and Mr. Stephens was in Washington. I tried out the needle demonstrated to me in California. I kept the needle and have it with me in the courtroom. That is the orig- 500
inal needle which I purchased in San Francisco.

Then I sent word to Mr. Stephens that the water tumbler was too large in diameter to fit the hand comfortably. He sent word, the latter part of April or the early part of May, 1923; he sent me word to use an egg cup, and an egg cup has been used by the Stelos Company ever since.

Then I returned to Washington in August, 1923 and found that Mr. Hodges was away on his summer vacation. I got in touch with him in the early part of September and assisted in the preparation of the specification of the application which was filed, as testified to, on September 23, 1923. 501

As soon as that was done we established a repair shop in Washington. We had extreme difficulty in convincing women that hosiery runs could be repaired. We placed a classified ad under the special notices column in one of the papers, offering to repair work for nothing, merely to advertise it. No one came. We then got no customers whatever. I then sent out one thousand postal cards to the working classes offering to repair hose for nothing and out of those 1,000 cards we received eight returns. The second 1,000 cards were sent to house-

wives offering to repair hose for nothing and six replies were received from that 1,000 postal cards. The third thousand cards were sent to the wealthy classes, with no word about repairing them free, but simply stating that we were doing this and quoting prices. We secured immediate returns, and from that small amount we were able to gather in our first business. As a matter of fact, the first four months that we were in business our gross receipts were $15.00. That was in the month of November, 1923. At the end of 1924 our gross monthly income
503 had grown to $125 per month. We continued endeavoring to secure customers and the business gradually but very slowly grew, until we received notice in March 1925, that the claims connected with our patent had been allowed, when we decided to see what could be done toward extending the business. In October, 1925, we sold our first franchise or license to a resident of Washington to cover the territory of Kansas City, Missouri, and Kansas City, Kansas. We did not solicit purchasers for franchises at that time. They came to us wanting exclusive territory. As a matter of fact, for the latter three months of 1925 we sold franchises to
504 the extent of $23,000.

The company was incorporated in October, 1924 and called The Stelos Company, Inc. taking parts of the name of Stephens and myself. There was no reason for the formation of this company under a name other than that. Mr. Stephens and myself, each owned 50 per cent of the stock of the company. We transferred our patent rights to the company for the value of the stock and then we each took 50 per cent of the stock. I was to handle the commercial end of the company, and Mr. Stephens was to handle the technical end of the needles, and so forth.

In 1926, the sale of franchises amounted to $480,000. In 1927, infringements commenced, and franchises fell off; the sale of franchises went down to only $125,000 and we were forced at the time to discontinue selling them because of the infringements and the infringers were leasing equipment. At that time we changed our plan to leasing the Stelos System. That was in 1927, first as an exclusive lease bearing a royalty payment, and later on, due to the infringing competition, we changed our plan and rented the system at a flat rental of $20.00 per month per unit. Later on we had such 506
difficulty in placing leases, that we abandoned it entirely. In 1928 the franchise sales amounted approximately to $30,000, but they were merely payments on franchises contracted for in 1927. We sold no franchises in 1929. We placed a number of leases on a rental basis, but found that due to this infringing competition, the cost of placing these leases was greater than the returns that we got from them so that was discontinued. We did very little business in 1929. I could not tell the exact amount because it was all rentals. In 1930 there were only a very few leases placed and those were entirely through correspondence. Our business was 507
very poor in 1929. We endeavor to give employment to those who are unable to work in other classes of work, as deaf and dumb, cripples, and that class, and we have employed them as much as we could.

Plaintiff's Exhibit No. 3 is a regular Stelos needle with the imprint stamped on the needle, "Stelos, patented 12/8/25," one of our regular needles.

Certified copy of assignments from the Hosiery Motor-Mend to the Kayser Hosiery Motor-Mend which shows an assignment of the Vanitas to the

508 *Frank A. Losh. Called by Plaintiff. Direct.*

Hosiery Motor-Mend, offered as Plaintiff's Exhibit 26.

I first saw the Vanitas system of hosiery repair in 1927. I first heard of it on complaint of a number of our franchise holders that the Vanitas system was interfering with their business and wanting us to do something to put a stop to it. We filed suit in Chattanooga, Tennessee against the Vanitas Company in the latter part of 1928. The papers were not served because, I believe, the Vanitas Company had gone out of business. We attempted to file suit
509 in Tennessee in 1928. I next heard of the Vanitas hosiery repair in the early part of 1929, I think, February, when we learned that the Vanitas system was again being used. We put Gimbel Brothers in New York City on notice of infringement and we filed the suit against the Hosiery Motor-Mend Company in this District.

Evelyn Stark has never been in the employ of the Stelos Company. At the time of the filing of the suit against her, she was operating a department in a Kresge Store in Kansas City.

Defendants' Exhibit B-40 is a duplicate of a needle purchased by me at a Woolworth's 5 and 10
510 cent store.

I am thoroughly familiar with the Stelos method of repairing.

I first learned of a needle on the market with those instructions of Defendants' Exhibit B-40 approximately "two years ago." I never saw it on the market before that time.

Of those who were connected with the Vanitas company and also with the Hosiery Motor-Mend Corporation when we filed suit against it, I am personally acquainted with George T. Walker. He is secretary and treasurer of the Vanitas Company.

He was formerly in the employ of the Stelos Company, acting as salesman for us and purchased a franchise covering the State of Florida. I learned that Walker became secretary and treasurer of the Vanitas company, the original company, in the report from the Dun Commercial Agency. I know as a matter of fact also that Walker was an officer of the Hosiery Motor-Mend Corporation.

I first heard of Kayser Hosiery Motor-Mend Corporation in May, 1929. I learned that the Kayser Hosiery Motor-Mend Corporation had succeeded the Hosiery Motor-Mend in the ownership of the Vanitas system.

The Stelos Company had not licensed Claim 23 of the Stephens method of hosiery repair, as distinguished from the handling of the system. We were asked to lease the method of claim 23 without the Stelos device. We had inquiries for that but declined to lease. We felt that it would be an opportunity for the encouragement of infringement of the Stephens method, of claim 23 and did not do so. As an example, the inquiry came from one of the users of the Vanitas system and I felt it would possibly encourage a Vanitas salesman to tell prospective lessees that this user of Vanitas was using the Stelos or the method of claim 23 and we were not objecting to it and encouraging other people and particularly the sale of other needles. It would encourage other people to use other needles than ours. I felt that people would put other needles on the market and lease them or sell them without any regard to our patent, claiming that other people that we thought were infringers were using that. That was our reason for not leasing the method independently of the device.

I saw the Vanitas system of hosiery repair in operation at the Knitting Arts Exhibition at Phila-

514 *Frank A. Losh. Called by Plaintiff. Cross.*

delphia, Pennsylvania, in the spring of 1930. At that exhibition, the Kayser Hosiery Motor-Mend Company had a public demonstration of the operation of the Vanitas system. I watched the operator operating the Vanitas system and found that the beginning of the operation was the using of the equipment without any motor power, working at an angle, to the side, after looping three or four loops with the hand method, the power was turned on, the run was all but completed, and the last few threads were again looped by the hand method holding
515 the needle always at an angle to the plane, an angle away from the line of the fabric, in the position as a man would naturally hold a pen or pencil. The stocking was stretched over some kind of a holder shaped like an egg cup and stretched with the left hand—held by the left hand. It was identical with what we call the Stelos method, or claim 23 of the Stephens patent.

Mr. Stephens and I are just as much financially interested in the continuation of the business of the Stelos Company today as we were in the beginning and we are still equally divided. Our ownership is still on a fifty-fifty basis, but the stock of
516 the corporation is not now entirely owned by us but practically seventy-five per cent of it is.

CROSS EXAMINATION BY MR. MORRIS:

I told Mr. Stephens that the hoops were not satisfactory because I found that in my belief and my experience of using them, they would not do commercially. You could get no speed using them. I did not find that a hoop allowed sufficient depth for the free use of the needle. I would say that the size of the hoops used was probably half an inch—

a regular embroidery hoop. If the hoop had sufficient depth for the free use of the needle, there would still be difficulty. There would be a difference between the hoop and a cup, or porcelain dish because to make the service commercial, you must have speed. You cannot get speed on any embroidery hoop. I merely say you cannot get speed in using an embroidery hoop, in commercial operation. It takes too much time to change the run and the hoops and restretch it. I presume that there is nothing in the patent to prevent your putting a band around a porcelain dish or egg cup instead 518
of your hand, but that would not be commercial to my mind. We could not get anywhere with it.

The Stelos System is the Stelos needle or device in connection with what we call the Stelos method, as outlined in claim 23 of the Stephens patent. I did not make any suggestions to Mr. Stephens with regard to what would be substituted for the hoops. The difficulty that I had with the water glass was that it was so large in diameter that with the left hand the hose could not be properly stretched over the top of it. It probably could be stretched with a hoop around it, like a steel band, for instance, but to my mind it would not be commercial; you could 519
not get enough speed. I could not say if it would be in line with our patent. I did not qualify as a patent expert.

I did not make any suggestions to Mr. Stephens with regard to the egg cup. He made suggestions to me. As nearly as I can remember, the first draft of the specifications was written entirely by me. Mr. Stephens and I consulted as to what we should say, but the actual writing, as I remember it, was made by me and in my own words. I did not do the experimenting for Mr. Stephens in perfecting the

520 *Frank A. Losh. Called by Plaintiff. Cross.*

invention. My use of the hoops and the glass was for my own purpose. I could not say that any suggestions of my own were written into the specifications. When I went to Mr. Hodges' office to tell him about our wanting to make an application, he suggested that in a general way, we write out what we had, wherein it was superior to something else and what it would do. Mr. Stephens and I then consulted, and between us, worked up the specifications which were written by me. I could not tell what contribution I made that is embodied in the
521 specification. I presume I did. There is no question about that. The guard was developed entirely by Mr. Stephens without assistance from me, but possibly something in the specifications might have been written by me. I did not have anything to do with the development of the method. I did not have anything to do with the development of the operation of the latch, nothing with the device itself, and nothing in connection with the magnetism.

CROSS EXAMINATION BY MR. WOOSTER:

I do not have any writings that Mr. Stephens and
522 I made of this invention before Mr. Hodges started to work, for the reason that I never keep that personal correspondence. I do not have any of the correspondence and telegraph messages that passed between Mr. Stephens and I. That was eight years ago. The suggestions about the water glass came from Mr. Stephens to me. I did not suggest an egg cup to him. He suggested it to me. I am sorry I haven't got that letter. I hoped to have that writing up of the preliminary work on the patent specification, that is all gone too. I was present together with Mr. Stephens and Mr. Hodges yester-

day, when the files arrived from his office. I can almost see the original specifications all in my own handwriting, and I was present when the file was opened and I had hoped to find it there, but I now believe we gave them to Mr. Hodges for his guidance and after he put it into what wording might be called the proper technical language, he returned it to me and I destroyed it without thinking it was of any value. I hoped to find it in his files. That must have been written early in September, because when I arrived in Washington the 15th of August, Mr. Hodges was away on vacation and did not re- 524
turn until the last of the month, so it must have been early in September of 1923.

We had not gotton out a considerable number of advertisements, booklets and circulars, within the first three years after the patent was issued. We did advertise the Stelos magnetic reknitting system. I do not know whether the magnetic reknitting system appeared in all of the publicity, but it did in some of it, in a great deal of it. We always emphasized the magnetism and the needle in selling our proposition. I did not know whether it was a good selling point to the public that we had something with magnetism in it to reknit stockings be- 525
cause I never sold any part of the system to the public myself. I should say that that was involved in the reknitting in the knitted goods business, magnetism in reknitting. As far as I know, it is fair to say that Mr. Stephens and the plaintiff company, put the slogan, magnetic reknit system, into the industry. I know nothing of a hotel card stating "If your stockings have snags or runs, send them to the Servidor Department. For a small charge we will have them quickly repaired by the new Stelos magnetic system, and returned to your room

526 *Frank A. Losh. Called by Plaintiff. Cross.*

as good as new." We did not issue those ourselves. That was gotten out by somebody else. We told no one to do it for us. We authorized them to do any advertising they pleased. I should say this was gotten out by the Chicago Stelos Company, one of our lessees in the West. Our lessees and franchise holders were not required to advertise the Stelos Company; they did that if they wanted to, if they wished to do so. That may have been in one of the leases, but not in the franchises.

We were responsible for the report in WOMEN'S
527 WEAR DAILY of November 2nd, 1928, referring to the Stelos Company magnetic reknit system. That is a fair sample of our advertising and the kind of matter that we have gotten out.

The card and advertisement marked Defendants' Exhibit F-44.

That is the letter that we got up with the Flawless Mend. This pink circular covers that.

The circular stating:

"U.S. Patent Reissue 16,360, history of a new industry.

"1925. Stelos changed an unprofitable service into a commercial industry with its pat-
528 ented method of hosiery repair. Stelos put the speed into hosiery repairing with its ingenious patented magnetic action and established hosiery repairing as a profitable business for retail firms throughout the world. Stelos gave to the hosiery industry the only commercially profitable method of replacing pulled threads.

"1926. Stelos discontinued machine attachments when it became obvious that they were impracticable.

"1929. Stelos Flawless Mend."

appears to be all right, but I do not remember seeing that particular circular.

It sounds correct. That Flawless Mend patent has come out. Mr. Hodges can give the number of it, I don't know offhand. I cannot say whether that has contributed to our commercial success. Our commercial success has been nil. I would not say one way or the other.

Flawless Mend Circular offered as Defendants' Exhibit G-45.

Broadside offered as Defendants' Exhibit H-46. 530

I did say that I saw the Vanitas machine operating with the identical method of claim 23. I would say it was identical. The machine did not have a pivoted latch, but the method of operating was the same. I am saying that the method of operation was identical. I did not say that the needle was the same; I did not say that. The needles are different, but the method is the same. The difference in the needle makes no difference in the method; it is the same. It was identically the same. That is what I said and I stand by it. I said that the method was the same with claim 23 531 and the Stephens patent. I stand by that. It is a fact. I say that the method was identical with the Stelos method. The method was the same. The method was the same but these two needles were not alike. The instrument did not have magnetism in it. The latch is different from the other. The method of operating was the identical method of claim 23 and of that of the Stephens patent as a whole. As I said before, the method of operation was identically the same with the Stelos method.

532 *Frank A. Losh. Called by Plaintiff. Cross.*

It seems to me that I ought to know what the Stelos method is. I am saying from my experience and familiarity and knowledge of these things that the two methods are identical. I know the operation of claim 23 and I know what was done on this Vanitas machine. I do not have to be a patent expert to answer that question. I do not claim to be a technical man, but I certainly do know that these two methods of operation or rather the operation of these two machines, was by identically the same method. I am talking about the method of claim
533 23, and the method that Mr. Stephens and Miss Gibson pointed out here and performed the other day; that was also the method of claim 23. They are all the same. Mr. Stephens and Miss Gibson were doing what I claim to have seen the Vanitas machine do and what I say is the operation described under claim 23.

I said that Mr. G. T. Walker had both been employed by the Stelos Company and held a franchise for Florida. He was an actual and direct employee of the Stelos Company. Not having the records here, it would be impossible for me to give the exact dates. However, it was somewhere in 1926 and
534 1927. He was employed as a salesman on a commission basis, operating out of Washington, and then Cleveland, Ohio, and purchased in 1926 a franchise covering the State of Florida which he resold or transferred to other people. After that, he operated as a salesman in the selling of franchises. That relation continued until about the date that we sold a franchise to M. Rich and Brothers in Atlanta, Georgia. That franchise is here. It will tell the date. I do not remember exactly the date.

We have had in the past inquiries for a license under the method claimed without using the Ste-

phens needle from other people who wanted to use the method aside from the Vanitas user. I do not think that some of them were written. Some of them were oral. It was others besides the Vanitas user.

CROSS EXAMINATION BY MR. MORRIS:

In the Vanitas method in Philadelphia, they inserted the repairing device into the hosiery the same as in the Stelos method. The operator stretched the hose over this aluminum cup, I believe it was, and inserted the hook of the needle, so 536
far as I could see, into the last loop of the run. I was close enough to see so clearly as to be able to detect that and did. I do not remember whether she ran or pushed it back of the run or loop after she inserted that into the last loop of the run or raveling. I was standing right alongside of her. After she inserted the thread repairing device into the fabric, she operated it by hand for three or four loops. With the first loop in the hook of the needle, she pushed it downward a certain distance. On the backward stroke, catching the thread in the hook of the needle, she looped it. She repeated that operation three or four times, and then turned on 537
the power and went almost to the end of the run. The latch of the needle did not close over the loop before the loop had slid back over the end of the latch and beneath the latter. I don't think so. There was no pivot latch on it. After she had grasped the thread she looped two or three loops. After the thread had been grasped by the needle, after the needle was pushed through the fabric the motion was reversed until the next forward thread of the run had been looped through the loop, hooked

538 *Frank A. Losh. Called by Plaintiff. Cross.*

through the loop. I did not watch closely how long that reversed movement was until the loop had slid over the end of the latch and beneath the latter. It was the process described in claim 23, to this extent, that the needle operated at an angle to the plane of the fabric forward and out of it, and as the downward stroke was completed, the new loop was made. That is different from the Mexican method in that the Mexican method was done over the finger and on the surface of the goods.

539 I would say that she was holding the needle at an angle which would be most comfortable, about the same angle as holding a pen or pencil in writing. That was practically the angle she was operating it at. In my opinion she caught the next forward thread in the hook while the loop was being pulled over the latch. She was using a sliding latch needle.

(Witness handed a sliding latch needle.)

XQ214. Won't you explain just exactly how it was physically or humanly possible for her to do it? A. I didn't observe that closely how it was done.

540 XQ215. If you can do it, that way, we will concede that you saw her do that. A. Now you want me to do it this way?

XQ216. That is right. A. Now.

XQ217. Now, re-try that same thing and stop when you get right here, make the loop along this way. A. All right.

XQ218. Now, catch the next forward thread in the hook while the loop is being pulled over the latch and then cause the latch to close over the thread. A. All right. Now I would say the latch

is being about here. The loop is being pulled over the latch.

XQ219. Did you not catch it in your hook long before? A. That is possibly about this point.

XQ220. Let us see you repeat that. Don't catch it up until you are pulling that loop over the latch. A. You have got it there.

XQ221. Don't catch it until you are pulling the loop over the end of the latch.

The Court: Sliding it.

542

XQ222. You didn't do that then before, did you? Now, then, can you do it any better than that? A. (Witness demonstrates.) I don't know just what you mean aside from that.

XQ223. While the loop is being pulled over the latch—now, don't catch it now until that loop is being pulled over the latch. A. That is the latch there.

XQ224. While the loop is being pulled over the latch. Don't catch that in the hook until the loop is being pulled over the latch. Don't catch that hook until the loop is being pulled over the latch. A. What you are getting at is probably due to the length of the hook.

543

XQ225. The length of the hook you think makes the difference? A. Yes, it was longer than an ordinary latch needle would be.

XQ226. Did she do it this way (demonstrating)? A. The same as claim 23.

XQ227. Do you not see as a matter of fact that you are not catching it in the hook while the latch or loop is being pulled over the latch—I will put it this way; Don't you see as a matter of fact, that you are not catching it in the hook while the loop is being pulled over the latch? A. May be I'm not.

544 *Frank A. Losh. Called by Plaintiff. Cross.*

XQ228. Did she continue the movement on through the fabric while holding the device laterally out of alignment with the one run or ravelling until the loop had slid back over the end of the latch and beneath the latter, then reversing the movement of the device to the loop, catch the next forward thread in the hook, while the loop was being pulled over the latch, causing the latch to close over the thread. A. That is the way I saw it.

XQ229. As a matter of fact, you saw her slide it under the latch in this case just as you did,
545 didn't you? A. I wouldn't say about that.

XQ230. Was she using this kind of needle? A. I did not examine the needle that closely. The length of the needle makes quite a bit of difference. But, I understand it was a sliding latch needle which works about the same as a pivot latch needle as far as the method is concerned, I would say.

XQ231. Claim 23 says "Continuing this movement on through the fabric while holding the device laterally out of alignment with the run or raveling until the loop has slid back over the end of the latch and beneath the latter". Now, will you or can you put the loop beneath that latch? A. I can not.

546 XQ232. Then that was not approximating claim 23, the same process or method of claim 23? A. I say claim 23 may be if I put it this way.

XQ233. Any way you like; go right ahead. A. As it comes along here, it goes into the sliding latch here when the thread reaches this point. It is equivalent to going back of the latch in our pivoted latch needle.

The word equivalent means equivalent. Equivalent is a thing that is equal to another thing, or produces the same result in practically the same manner.

XQ239. Now, then, catching hold of this loop—
A. Yes.

XQ240. In there? A. Yes, sir.

XQ241. —is the sliding back of the loop over the end of the latch or beneath the latch? A. Is equivalent to it.

XQ242. Now, what is equivalent of catching the next forward thread in the hook while the next forward thread is being pulled over the latch? A. The equivalent of that is that your hook in this needle is much longer than the hook in the ordinary pivoted latch needle. Now in this needle, the next forward thread must go into the hook, due to its length, although it is a sliding latch and sliding forward to close it. 548

XQ243. That is true? A. Yes, sir.

XQ244. It seems to me that I read somewhere that "equivalent" means that it had the function in substance of some other things in the same way. A. Yes, sir, that is my idea of equivalent.

XQ245. In other words, that function would be the same in every way in both, in order to be equivalent? A. Well, the function is the same in both.

XQ246. Are you sure that the same function forces the thread into the hook, in both instances? A. I would not say that this is forcing the thread into the hook. 549

(After Recess.)

550 *Aubrey C. Dickson. Called by Plaintiff. Direct.*

AUBREY C. DICKSON, a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GILLIGAN:

My name is Aubrey C. Dickson. I live at 515 West Clapier Street, Philadelphia. My occupation is secretary and treasurer of the Eastern Stelos Company. I first learned of the Stelos system of repairing hosiery in the fall of 1925. There were
551 about three of us stumbled upon the Stelos System quite accidentally. We went down to Washington to investigate the system. We thought so well of it that we took an option on a franchise for Eastern Pennsylvania, Southern New Jersey and the State of Delaware, and then we came back to Philadelphia to make investigations as best we could. We were not in the hosiery business at the time we investigated this matter and knew nothing about the hosiery repairing business. We were interested in a financial proposition that had nothing to do with hosiery at all.

We staged two or three demonstrations in the Benjamin Franklin Hotel at Philadelphia, to which
552 we invited three prominent mill representatives, one Mr. Hemmerich, representing the Berkshire Mills at Reading, Pennsylvania, one of the largest mills in the country; the next, the George S. Hancock Knitting Company, and the other, the Thomas E. Brown Company of Philadelphia, Mr. Brown himself coming over. These men that were there and saw this demonstration were so very much impressed with it, that it impressed us further. That practically determined us to accept the option on our franchise that we did purchase for the sum of

$36,400. We incorporated our firm on December 22nd, 1925, and started operations January 15th, 1926.

In addition to the demonstrations for mill executives at the Benjamin Franklin Hotel, we visited the various department stores in Philadelphia, notably John Wanamaker, Gimbel's and A. H. Greuting Company. None of the stores were undertaking to do any hosiery repairs, excepting the one last mentioned. In that store we found out that hosiery repairs had been done by former mill employees with the old hook or finger method. None 554
of these people with the exception of this one store had had any repair work done previously. They said if we would do what we said we would do, they would be very glad to give us their hosiery repair business.

During our investigation we learned what was done with the badly damaged stockings by the mills. We found this situation to exist. In the mill, the hosiery damages are classified into seconds, and thirds, and cut-ups. Now, these were sold at a very nominal figure to jobbers who seamed them up. They never reached original perfection again, and they were merely seamed up and sold. We
were enabled, by our process, to turn seconds, thirds 555
and cut-ups into firsts, irregulars and seconds, thereby enabling the mills to realize on these damaged goods the difference of what they would have lost otherwise, and that which they had to pay us at that time. We charged them then $3.60 a dozen pair for such repairing. The Berkshire Mills never sent us any work to our shop, but they leased six needles from us at a rental of fifty dollars per month, per needle. The first two needles were leased on a yearly basis for a year and then Mr.

556 *Aubrey C. Dickson. Called by Plaintiff. Direct.*

Hemmerich was so much impressed with the speed and results that he could obtain with our needles that the next two needles that were leased, were leased on a three year basis. That shows how much he thought about the needles. He wanted to be sure that he would have those needles for that period of time. In addition to the Berkshire Knitting Mills, we also leased needles to a number of other companies, some of which were: the Meinig Hosiery Company, the "Noe-Equl" Hosiery Mills, William Brown Company, Bromhard & Kramer, H. C.
557 Aberle Company, Hancock Knitting Company, Apex Hosiery Company, Endurance Knitting Mills, Kraemer Hosiery Company of Nazareth. The Meinig Hosiery Company and the "Noe-Equl" Hosiery Mills, the William Brown Company, Bromhard & Kramer Company, and the H. C. Aberle Company as well as the Hancock Knitting Company and Apex Hosiery Company, were located at Philadelphia; whereas, the Endurance Knitting Mills and the Kraemer Hosiery Company were located at Nazareth, Pa. To all of these people we leased these needles at the same rate of $50. per month, per needle. All of that was in 1926 and the early part
558 of 1927. When I speak of renting the Stelos needle, I mean the Stelos needle with the Stelos method, which has been stated here in claim 23 and termed as claim 23 method.

We exhibited at the Knitting Arts Exhibition in Philadelphia, beginning in 1926, and continuing up until the present time. The first year, in 1926, when we made our exhibit there, I suppose our exhibit was the high spot of the exhibition, you might term it. There were mill men there from nearly every State in the United States as well as foreign countries, for instance, Canada, Australia and other

countries. The interest exhibited by those mill executives in our system was more than can be expressed in words. They had never seen anything like it. There were no other systems of hosiery repair exhibited at this exhibit in 1926. There were others in 1927.

In the year 1926, we did a total business of $58,000; in 1927 our business was $100,000; in 1928, our business was $100,000; in 1929, our business was $72,000; and in 1930, our business was only $40,000.

Starting in 1927, we began to feel very greatly 560
the efforts of other so-called infringers on our patents. I investigated to find out who they were. In 1927, we ran up against this competition from the Vanitas Motor-Mend Corporation. We then were followed with the competition of the Knitbac Corporation, sponsored by the Gotham Hosiery Company.

In 1926 and 1927 we had some customers in the City of New York, if not most all of the largest department stores in the City of New York. Some of them were: Gimbel Brothers, Saks-Herald Square, Russek's, Kayser Stores, Inc., Saks-5th Avenue, Altman's, Best & Company, Bonwit-Teller, and
many others. We also had Gimbel Brothers in 561
Philadelphia and John Wanamaker. Our competition became more and more keen in those centers. We were permitted to operate in territories not under franchise and New York was open territory.

The only repairs, as we understood it, that they were doing in the mills at the time we made our investigation, were done by the hook method or finger method and that to a small degree, because they could not get sufficient speed out of those needles to get results.

562 *Aubrey C. Dickson: Called by Plaintiff. Direct.*

The competition with the Vanitas Company machine and their system of repair caused us to lose Gimbel Brothers in New York and in Philadelphia, as well as other stores. In New York, we started to operate with Gimbel Brothers, about the first part of June, 1927. Their account, in dollars and cents, from that time until about the middle of 1928, of October, 1928, averaged from $200. a month at the start up to $800. a month. Now, in the Philadelphia store of Gimbel Brothers, from a start of something like $200. a month it increased to
563 something like $600. a month. I should say the two together would readily average about $1000 a month for the time. Those figures are gross. We lost those two accounts. The Vanitas System succeeded us to that business.

When my associates and myself first learned the Vanitas system of hosiery repair was in the market, we made an investigation of it. When we heard that George Walker, who originally had the Vanitas system, had gotten out a new machine we came over here to see the machine as a matter of interest. We did not at that time know what it even looked like, or how it operated, and we wanted
564 to see it. When we got here we were met with a claim by George T. Walker they were still making improvements that would prevent them from showing it to us. After we left his office, we went down to Gimbel Brothers, New York and on the Fifth floor of their store saw a Vanitas machine in operation. We actually saw it in operation. We got a demonstration of the manner in which the Vanitas system, needle and method, operated. We observed that there and I have since seen them closely in their own place. We did not stop very long there at Gimbel's. I saw the Vanitas system demon-

strated to me in the offices of the Kayser Hosiery Motor-Mend Corporation in New York City by their own demonstrators. The young ladies held the needle over an egg cup of aluminum or porcelain, or some similar holder, over which the hose was stretched. The needle, which was held by the operator, was first inserted in the fabric, and a loop or so taken, and then they turned on the power and then she reknitted the run on down about to the end. She secured the same results that were obtained from any repair system. The needle was held in a way convenient to the operator. They held it 566
off to the side of the run they were repairing. They would hold it more or less at an angle. No one girl would operate at an angle like another girl. Different girls operated it different angles to the plane of the fabric. I saw the manner in which the needle of one of the girls was held, and she would hold it first over this way and then sometimes over that way. She would operate it that way. I do not operate a needle. This was being demonstrated by two different girls, in the offices of the Kayser Motor Mend Corporation, in New York City. They operated these needles at an angle to the plane of the fabric substantially the same or in the same manner in which our needles were operated. I am 567
not a technical man and it is difficult for me to describe just the angle at which they operated these needles. It was about this angle (witness indicates). It is in this same position, just like this. It was held in the same position that a pencil or a pen would be held comfortably or reasonably, not in the line with the plane of the goods or the fabric.

In addition to Gimbel Brothers, we lost several mill accounts in the City of Reading, Pennsylvania, where they were using Vanitas machines; this hap-

pened along in 1927 and 1928. They practically took the better part of that Reading business away from us. They had a branch right there in the city, and we lost that business due to that fact, and to other facts. We lost accounts of several other stores, just how many I could not say offhand. There were many other people that we lost too, because they used to send their work in to us. A number of other accounts were lost to us by reason of the makers of other needles. They would set up a place with their needles, and then we would lose
569 the business. I can not specify just what stores were taken away from us by the Vanitas people. I knew it was used by another repair concern in Philadelphia, who took the business of several other stores which we originally had.

CROSS EXAMINATION BY MR. WOOSTER:

Besides the Vanitas system or needles, we have competed with about ten or twenty different other needles since we went into the business. I do not know their names. I can not recall all of them. I believe some of them were pivoted latch needles. The Messing and Gearhart are pivoted latch nee-
570 dles. The Gotham needle is a pivoted latch needle, I believe. I can not say positively about that needle. It operated in a vertical rectilinear line, about the same as a sewing machine with a latch needle instead of an eye-pointed needle. None of the others that I know of besides the Vanitas needle had a sliding latch. That is the only one that I know of.

The holder of the Vanitas needle is connected with a motor. The girl held the Vanitas needle in a holder when she first took hold of the needle;

that was before she turned on the power. She could stop the needle by the device on the holder, whenever she wanted to. She would stop the needle, and she worked it by the hand method, simply to get it started. We have no power for our needle. I saw Miss Gibson when she was here, sometimes start, and then stop and pull it out, and then make another start with those runs when they did not go just right. If they dropped a stitch, then naturally, they would have to pick it up again.

She starts with the hand motion, and then turns on the power. She could not have the power on 572
when she started, because it then would be going too fast. She had to start with the hand motion. That is the way she started it.

Not all of the mills whose names were given are now using our needles, that did when we first started with them. Not all of the remaining ones are using the Vanitas. They are using other needles, not all Vanitas needles. The mills that I mentioned were using nothing that I know of before we got our system in there, but the old fashioned hook needle with the finger method. I personally, at the beginning, did not solicit the mill business. That was done by another man, a witness who will testify here later. I know what they did from what 573
the executives told me they did at that time. In the last year or two I have personally seen it.

After we got our system in, they did not use anything else, that I know of. They possibly kept theirs alongside of ours, but I do not think they would do that from a practical standpoint. I do know of mills that kept the old system that they had, and never changed. I know of mills where I would go in and see the Vanitas and Stelos and Messing and also an ordinary latch needle. I

574 *Aubrey C. Dickson. Called by Plaintiff. Cross.*

think you could see a half dozen different needles operating in the Berkshire Knitting Mills at Reading. We are at this time leasing the Berkshire Knitting Mills six needles. I do not know how many Vanitas they have. I do not know exactly how many they are using all together, but I imagine they are using about 15 or 20 needles of all types that they are using. The mills experiment with every needle that comes along, certainly in the Berkshire Mills, and as I imagine, as most of the other mills do. They all experiment. Some of
575 these mills have continued to use the old hook and latch needle to repair runs of thread throughout all of these six or eight years, in very short runs, from one to three dropped stitches; the rest of it is done with other needles. There are no holes or runs in stockings that have to be repaired with the open hook needle; they can be repaired with the others, but most conveniently with the open hook needle. With only one or two dropped stitches, it can be repaired most quickly with the old needle. For any length of run, they are not used; but for a short length of run, they do use this needle as I have stated before, and they still use it for that purpose; they still use the latch
576 needle or that old sliding latch needle and find these most practical. I mean a latch needle as against the hook needle, because it would depend upon the length of the run as to which one you would use. The new type is better for the long run. The old type is used for the short.

The Stelos needles work with the magnetic latch, and their advantage is they are very much faster than the old type needle. The Stelos needle is simply the DeMarr needle with the magnetic latch and other improvements, which make it go faster.

The magnetic, influence of the magnetic feature of opening that latch automatically or magnetically makes it work faster.

I don't know so much about whether the sliding latch needle is a new type of needle or an old one.

I have personal knowledge that the Stelos needle in my territory superseded other needles. Outside of the hook needle and the plain ordinary latch needle, machine needle taken out of the machine, the Stelos needle in operation was the first needle to give that practicality to hosiery repair that the Stelos needle has given. I would say that 578
the open hook needle and the plain latch needle were superseded by our needle. It superseded two needles. There may have been one or two of those needles left in my territory.

Instances that I know of where the Stelos needle drove out or replaced the open hook needle or the pivoted latch needle, or both, and aside from the mills mentioned before are the following: Artcraft Silk Hosiery Mills, the Buck Hosiery Mills, the Co-Ed Hosiery Mills; the Howard Hosiery Mills, the Quaker Hosiery Mills, the Vogue Hosiery Mills, the Best Maid Silk Hosiery Company, Nolde & Horst, Lansdale Hosiery Mill, Dexdale Hosiery Mills, Paterson Mutual Hosiery Mills of Paterson and 579
also Philadelphia, Atlantic Silk Hosiery Company; Rivoli Silk Hosiery Mill, Vertex Hosiery Mills of Weissport, Pa., and several other mills in the South, whom I just don't recall now, who used to send all their repair work to us to be done. They never sent it to anyone to be repaired before, and according to their management or executives, they sent the work to us entirely.

In those cases that I have just read to you where they sent their work to us, instead of doing it them-

selves with the open hook or the plain latch or other needles as I have described, these needles were all replaced by the Stelos needle. I know there were a dozen or fourteen mills which I have mentioned here, and that these mills sent us their work continually. Instead of doing the work with their own needle, they were sending it to us and we were doing it ourselves. Of my own knowledge, I know of cases in which the old needles were actually displaced and taken away and in which we placed our Stelos needles alone. I know of that in the Hancock Knitting Company and the Aberle Company, the H.
581 C. Aberle Company, and the William Brown Company, and in the Meinig Hosiery Company, and the Berkshire. I said that they had some 15 needles there; they have a number of different needles up there from 15 to 20. We have some of our Stelos needles in their repair department. We leased six of our needles to the Berkshire Company, and that six must have replaced those old needles that were there. There is a remote possibility that they might have been additional needles to the needles they already used, but I don't think they did. Possibly they didn't drive those needles out of the Berkshire Mills room.

582 We have about one-third of the needles out today of what we had in a peak year. In 1927, I would say, there were 18 or so needles that we had leased which has dropped down to today, when to all the mills we are only leasing 11, I think. The price of hosiery is considerably lower today than it was at that time. With cheaper hosiery it does not pay as well to repair today as it it did in 1927 when the price of raw silk and the price of labor and the price of the finished goods were higher; naturally that factor must be taken into consideration. The majority of our loss has been due to the various

competitions against our needle, because we have suffered most severely from 1927 to about June, 1930 through competition. It has only been since about June, 1930 that the lower price, in general, of hosiery has had any bearing on the subject.

What I meant is that it is quite true that you have to take the low price of stockings into consideration, but the effect of the lower price is more noticeable since 1930 than it was in the previous time, and for that reason I attribute the competition to the sudden drop in my line, rather than the lower price of stockings.

584 I can not give any definite date, when any of these other needles entered into competition against us. I would say, from June, 1927, on the Vanitas, from June, 1928, but we have had competition from other needles since June, 1927. I can not recall the names of all those needles. I think there was a needle made in Reading at that time, June, 1927. That was the needle owned by Rick & Company. Eberle & Company. I cannot say whether they had an Eberle needle in the Berkshire Mill at the same time. I imagine they did; they tried about everything. I could not say directly in what mills I found the Eberle needle. It would be among the Reading mills, not so much in the Philadelphia 585 mills. It was mostly in Reading. I know of the Outbrook Knitting Mills in Reading. I have only listed one other mill in Reading. That is Nolde & Horst.

CROSS EXAMINATION BY MR. MORRIS:

I have a complaint about our business being taken by a competitor when I believe him to be an infringer on our process. If he produced the same results without infringing, I would have no com-

586 *Aubrey C. Dickson. Called by Plaintiff. Redirect.*

plaint, nor if he takes our business by reason of a better needle if it does not infringe. One is legitimate and the other piratical. That is the way we look at it. I really would not say that the Vanitas is better than our needle. I believe the Stelos needle to be as fast or faster than any other needle on the market, for the reason that that needle can be run as fast as any human hand can operate or as fast as any machine can drive it if operated mechanically. I should say that Mr. Stephens invented a good needle as well as a method. Then, naturally,
587 not all the revenue that I was talking about in 1926, 1927, 1928, and 1929 and 1930 was because of the goodness and excellence of the needle.

REDIRECT EXAMINATION BY MR. GILLIGAN:

The Gotham Knitbac Company came into the market after the Stephens method. We do not receive as much rental from the system now as in 1926. In 1926 the six Berkshire needles brought in a revenue of $300. a month; now they bring in a revenue of $75. a month. It was necessary to reduce the price on account of the competition we encountered from other needles. We only leased the Stelos
588 needle, which is never for sale. We could not lease the Stelos needle at $15.00, $20.00, or $50.00 a month against the opposition needle, or so-called infringing needle, which was sold outright for from $1.00 to $10.00. When I use the expression "Stelos needle", I mean the Stelos System.

Adjourned to March 24th, 1931, 10:30 A. M.

After adjournment.

RAYMOND C. STORB, a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GILLIGAN:

My name is Raymond C. Storb, my residence is 182 North Broadway, Yonkers, and I am a national distributor for an exhaust ventilator. I am not connected with Eastern Stelos or any other Stelos concern at the present time. I was until December 590
31st, 1930.

I became interested in the Stelos System in the early part of 1926, I believe it was, on my visit down to Washington, where I saw the Stelos process in operation in the Stelos office. I came back to Philadelphia, and made investigations with different manufacturers of hosiery and also different retailers of hosiery as to the methods in vogue for repairing runs or pulled threads in damaged hose. I was in communication with, I believe, three different mills, and in those mills, the first one, Mr. Hemmerich of the Berkshire Knitting Company, which mill, I believe, is the largest manufacturer 591
of full-fashioned hose in the country; and Mr. Brown of the Brown Hosiery Company, which was a fair sized company, and with Mr. Gee of the Hancock Knitting Company, which was a very large mill; I was in communication with all of these mills. We gave a demonstration in the Benjamin Franklin Hotel, in Philadelphia, and these executives thus saw the repair of hosiery in operation. Aside from that, we exhibited it to some of the retailers in Philadelphia, the large retailers. It was the first time they had seen a stocking repaired

similar to the Stelos method. It was faster and better, and was done in a better way, in a better manner. In addition to the manufacturers, I was in communication with a number of large retailers and also with Mr. Parker of the Parker Hosiery Company. That was when this other thing was going on. That company was in Philadelphia. Mr. Parker was one of the gentlemen who had a chain of hosiery shops, possibly 15 or 20 in number. They were something on the order of the Goeting Company to whom also we showed the device and they were greatly pleased with it. Then, there was Mr.
593 Frazer, who is the buyer for John Wanamaker Company in Philadelphia. These people gave us the same reaction that most of the other people gave us, that is to say, they had never seen a stocking repaired that way, and that the mend was the best that they had ever seen done and the most economical and the most practical. I then went into the mills and saw the hosiery repairs, how they were being done. That was after the Eastern Stelos Company was organized. We started operation sometime in January, 1926. I was president of the Eastern Stelos Company. After the company was in operation, I visited practically every full fashioned
594 hosiery mill in the Eastern Pennsylvania district, possibly 40 or 50 in number. To some of them we leased needles on a monthly rental or royalty basis of $50. per month, or $600. per year. Some of the other mills that were not large enough to have enough work to keep one needle busy. We solicited their business from them and they had their repair business sent to our factory for repair.

I was usually taken into the mending department of the mill that I solicited, and saw mending actually in progress. The mending was done with two kinds of needles. In some of the mills they

used what we call the old fashioned hook needle and the stocking was placed over the finger of the girl and the needle was used operating through the plane of the fabric. It was a very laborious method, and it did not pay the mill to mend stockings with that method, unless the run was very short; that was to say, two or three loops, or something like that, possibly as many as five. If it was more than that it did not pay them to do it. Then they had some other kind of method with a latch needle which they used when they had a longer run. Neither of those two methods was very satisfac- 596
tory because they were so slow in operation. Some girls were trained with the hook needle, and others, with the latch needle. The mills that I visited, which was practically every one in the Eastern Pennsylvania district, had never seen stockings mended by means of the Stelos method, that up and down motion.

At the time of my investigation, in the mills that I visited, the damaged hosiery that was not damaged so badly, that is, for instance, if there were runs of one or two inches only, they would mend them. Those that had runs longer than that they put on the seaming machine and seamed them up and sold them for one-quarter or one-third of the 597
regular price; they got very little for them, possibly $2.00 a dozen pair.

I could give the names of those mills that I visited and later got business from at the Eastern Stelos Company. I have a memorandum here. I have a list of all the mills from whom I got business. There is the list of mills to whom we leased a needle or needles; some of the mills we leased only one needle, one of them, I remember, we leased six needles.

598 *Raymond C. Storb. Called by Plaintiff. Direct.*

"Berkshire Knitting Mills—Reading, Pa.
The Meinig Hosiery Co.—Reading, Pa.
Noe-Equl Hosiery Mills—Reading, Pa.
Wm. Brown Co.—Philadelphia
Brownhill & Kramer—Philadelphia
H. C. Aberle Co.—Philadelphia
Hancock Knitting Co.—Philadelphia
Apex Hosiery Co.—Philadelphia
Endurance Knitting Mills—Philadelphia
Kraemer Hosiery Co.—Nazareth, Pa.

599 "Noe-Equl, Apex, and Endurance, have discontinued using our needle and are using other infringing needles.

"In addition to leasing needles to the mills we repair large quantities of mill hose in our own factory. We include among our customers the following—

Artcraft Silk Hosiery Mills,
Philadelphia, Pa.
Buck Hosiery Co.,
Philadelphia, Pa.
Co-Ed Hosiery Mills,
Philadelphia, Pa.
600 Howard Hosiery Co.,
Philadelphia, Pa.
Quaker Hosiery Co.,
Philadelphia, Pa.
Vogue Hosiery Co.,
Philadelphia, Pa.
Nolde & Horst Co.,
Reading, Pa.
Lansdale Hosiery Mills,
Lansdale, Pa.
Dexdale Hosiery Mills,
Lansdale, Pa.

Paterson Mutual Hosiery Mills, Inc.
Paterson, N. J.
Atlantic Silk Hosiery Co.,
Paterson, N. J.
Rivoli Silk Hosiery Mills,
Plainfield, N. J.
Best-Maid Silk Hosiery Co.,
Quakertown, Pa.
Vertex Hosiery Mills, Inc.,
Weissport, Pa.

"It is frankly admitted by the most successful owners and managers of the largest full-fashioned hosiery mills in both the Philadelphia and Reading Districts, that the Stelos magnetic method, of reknitting runners and adjusting pulled threads." 602

In addition to the needle leased, we furnished an egg cup and a stiletto and trained the girls. The stiletto was a little pointed instrument used to straighten out the runs. We instructed the girls in our own factory. The mill girls were sent to our factory and we instructed them in the operation of the Stelos method.

I have a memorandum which shows the volume of business done, with the mills in hose repairing in the years in which I was actively connected with the Eastern Stelos Company. In 1926, there was sent to our factory, what amounted to 13,709 dozen pairs; in 1927, 14,424 dozen pairs; in 1928, that is when the alleged infringement started, 8,795 dozen pairs. I left the active employ of the company in June, 1929, so I can not testify very definitely about 1929. The decided drop in 1928 was on account of what we call bootleg needles, or needles 603

that we claimed infringed our patent. There were quite a number that gave us a great deal of trouble in 1928, but the one that did us most harm, of course, was the Finch needle, the Vanitas needle, that took away two or three of our best accounts. Those were Gimbel Brothers of Philadelphia, Gimbel Brothers of New York, and there was a repair company in Reading, owned by Mr. Rich,—I don't know, there were quite a number of other accounts. I cannot tell all of them; there were some mill accounts.

605 We heard Gimbel's, New York, were using the Vanitas needle; I saw it in the New York office of George Walker, who, I believe, had charge of the Vanitas machine—George Walker was a personal friend of Mr. Dickson and myself,—We went to Mr. Walker's office and we asked him to show us the machine, which he refused to do. A little later in the day, we went to Gimbel's and got in communication with the head of the hosiery department of Gimbel's and went to the fifth floor and saw the machines in operation. We actually saw the machines in operation. The young ladies held the needles the way our girls held the Stelos needles. They placed the fabric over an egg cup or holder;
606 such as we used, started the run exactly the same as our girls started the run, with hand needles. After they started the run, they turned on the power and the machine automatically knit the fabric. I saw that with my own eyes.

I testified in the case of the Stelos Company vs. Finch Corporation in Washington along the same line.

CROSS EXAMINATION BY MR. MORRIS:

The manufacturers that I visited had never before seen the Stelos method that I disclosed. The method that I showed the manufacturers and buyers and what I showed to three men who, I believe, all hosiery manufacturers will agree are the daddies of the full-fashioned hosiery business, Mr. C. H. Averly, I believe his initials are C. H., who really started the full-fashioned business; Charles A. Chapman of the Chapman Mills who was a man past seventy; is about the biggest there is and Mr. 608.
Hemmerich of the Berkshire Knitting Mills, who really knows more about hosiery than anybody, was to place the fabric over an egg cup; it was a pumping method, up and down method—that is the only way I can describe it, placing the fabric over an egg cup, instead of using the needle in this position (indicating), you go up and down. I am not a bit technical in this stuff. In the first place we stretched the fabric over a suitable holder, which was an egg cup; we inserted the Stelos needle or needle with a hook and pivoted latch, magnetized needle, through the loop formed in the run or raveling; I do not know what loop, nor whether it was the last loop. I can not mend stockings myself. 609
I did not do the actual demonstrating myself.

The repair device was inserted in the last loop, or two or three loops back. Sometimes in one place, sometimes two or three loops back; sometimes in the first loop and sometimes back. You could see the girls do it. When the girl had hooked in the loop, she just ran the needle up and down. She held it at different angles. I mean different girls held it at different angles. None of them held it straight up, vertically, from the fabric. I don't think you could

mend it that way. They did not hold it down close to the fabric. They held it somewhere just about at this angle (indicating). It would be something like the way you hold a pen or pencil. They did that continuing this movement on through the fabric, holding the device laterally out of alignment with the run or raveling until the loop had slid back to the end of the latch. I don't know whether the latch was full open. As I say, I don't know the mechanical end of the thing. I am not a mechanic. I was not particularly interested in that;
611 I don't know when they reversed the movement of the needle. I do not know where they caught the final thread in the hook or where the loop was when they caught that. The net result was that they mended some stockings in our presence.

Our instructions were given to those girls that were installed in these various factories by our instructors instructing girls. They were girl instructors. The instructions were given in my presence. The instructions given were in the operation of the Stelos needle. I don't know what the instructions were. I just know that they were instructed. I did not pay any attention to the details of the instruction.

612 The Vanitas did take away two or three of our best accounts. I consider that our needle is the very best needle I have ever seen. Mr. Stephens created a new industry with his needle, that needle. One method by which they took away these accounts was clever salesmanship. The Vanitas needle is fair. That sliding latch needle in that Vanitas is the Finch needle. It is the same thing. I mean a Finch needle in the Vanitas machine, Finch needle used in this slantwise method over some sort of a holder, is what I mean.

I do not see how the Vanitas needle could possibly be considered better than our needle. That is inconceivable to my mind. It was simply by this clever salesmanship in putting it over. I do not see how it would be possible that any of this clever salesmanship was due to the Vanitas needle being better than our needle.

I credited the Vanitas needle with being partially responsible for reducing our repair work from 13,709 dozen pairs in 1926 to 8,795 in 1928; they did not take it all. I can not say how many other needles took some of it. In my mind, there is 614
no needle that took it that is not an infringing needle. They are all absolutely infringements, in my mind.

I did see some operators though who were holding the stockings on their fingers. I saw some operation where the stocking was repaired by the finger method. As a rule the girl held the stocking on the finger of her left hand and used the needle with her right hand. I would say that the stocking was on the first two fingers of the left hand. I am not sure of that. I couldn't say which two fingers. It may have been three fingers. I could not say how tightly the fingers were held together.

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CROSS EXAMINATION BY MR. WOOSTER:

We tried to lease needles to these mills on that first visit. There were a great many mills to which we did not lease needles. All the mills were doing their own repairs before we offered them the Stelos process and the Stelos needle; they all did a certain amount of their repairs. Some repaired, with a hook needle, and some, with a latch needle. They all did it by the same method, on the finger, the way

616 *Raymond C. Storb. Called by Plaintiff. Cross.*

that I previously mentioned on the finger. All of the mills that I saw did it that way with either the hook needle or the latch needle. The stocking was generally held on the fingers of the left hand, about two or three fingers being used. The right hand held the needle. The girl by means of a hook in her hand, took the needle and pushed it in and picked up the stitches, and in that manner reknitted the run in the stocking. In some cases they used the open hook and in some cases, the latch needle. That was the practice in all the mills I visited.

617 I saw that practiced in practically every mill that I visited, practically all the mills of the Eastern Pennsylvania and Reading district. I can give the names of a lot of the mills, the names of the superintendents, but I cannot give the dates. That was back in 1926 and this is 1931, 5 years ago. I can give the spread of dates, the months over which I made those visits. I do not have a diary that records my movements and visits to these various mills. I think I can tell in a great many cases who I saw. It was either the superintendent or the manager of the mill, but I could not give the exact days or dates. They either took me around

618 and showed me the mending department or they had a number of their menders come in to their offices. And they did that for me in their offices. I can give you the names of a great many mills, but I cannot tell you the names of the girls. I can tell you the names of the men with whom I did business.

Now, as to the time from February, 1926, to June, 1926, I visited the William Brown Company, and conferred with Mr. Sullivan, who was, I believe, the president of the company. That is one.

About the same time I visited the Hancock Knitting Company in Philadelphia. The William Brown Company also is in Philadelphia. At the Hancock Knitting Company I conferred with Mr. Gee, who is the superintendent of the mill.

I next visited the Artcraft Hosiery Mills, and conferred with Mr. Kugelman, who is the president of the company.

At the same time I visited the Glenwood Hosiery Company, and conferred with Mr. Thomas Brown, who was the president of the company.

At that time I visited the Kraemer Hosiery Com- 620
pany, of whom Mr. Kraemer is the president. There are two Kraemer Hosiery Mills. I think there is only one Kraemer in one of the mills. I think the other one died. This Kraemer mill is in Philadelphia. There is another Kraemer Mill that is away from there, in Nazareth; I did business with the Kraemer Hosiery Mill at Nazareth. I did not go to Nazareth. I did business with the hosiery mill at Nazareth, through my Philadelphia office. I do not remember what member of the company I did business with. I think all the business was done by correspondence. I never was in the Kraemer's Mill at Nazareth. I saw Mr. Chipman of the Chip- 621
man Mills at Easton and Mr. Charles C., Jr., a young man whose father is one of the executives of the mill. I saw his father and the young man in my own office; both the father and the son were in my office at Philadelphia, and at that time we went over the Stelos needle, and the Stelos method, and they were absolutely astonished at each and everything I showed them about it, and they were delighted with the prospects they had of using this needle, and thus saving the mill a great deal of money. I do not recall whether I saw their mend-

ing department. I afterwards leased them some of the Stelos needles. I could not say whether they threw it over later on. I have not been actively connected with the Eastern Stelos Company for a year and a half, and I could not say what has happened during that time. I would not know one way or the other. I do not remember whether Chipman gave up his Stelos license before I left the Eastern Stelos Company. The Apex Hosiery Company is one, I believe, who did take a license and then gave it up before I left the Eastern Stelos
623 Company.

I would not say that the Stelos needle always displaced the old method that the mills were using. I imagine that in some cases they probably use the old needle to run up runs from an inch to two inches, but no longer than that. I am not sure about that statement, of course, but I believe I am right.

I did not take any missionary trips merely to see what, if any, interest there was in the possibility of putting a needle in. I was out for business. I carried along with me a trained operator, an expert operator, for the purpose of demonstrating the Ste-
624 los needle every time I went out. I was always accompanied by an expert operator to demonstrate the Stelos needle. I do not know whether she is here to testify. I do not think so. None of them are here that I see.

I do not think they would be better qualified to tell how the menders worked than I would.

We never used any high pressure in the Eastern Stelos Company. I do not use high pressure salesmanship on any of the mill executives. We have not told all of the mills that the Stelos method had been sustained in the Stark case in Missouri; prob-

ably we told a number of them. To my knowledge we never did send reprints of a decision in that case to these mills. We had a number of the reprints for our own use to look at them and read them. We kept them in our pockets. I do not think we ever sent any out. So far as that company is concerned, we never sent any out that I know about. However, Mr. Dickson was in charge of that. He would be better able to tell than I am. I did not personally tell the Washington people to send them out for us. I did not personally use that Stark decree at all. My company did not, to my knowledge.

In no instances did any of these mills take a lease, to get rid of me, that really did not want it. I think a man would be very foolish to spend $50. a month for a year to get rid of a salesman. The Stelos needles must have been used by the mills that leased them because the mills renewed their leases. I do not think they would be foolish enough to renew their leases if they did not intend to continue the use of the needle. I do not believe they would renew the lease of a needle if they had not been using it in the past. I said a number of mills discontinued the use of the Stelos needle, but a great many of the others renewed their leases. The needles were used of course when the mills did not renew their leases at the end of the term. They used our method in operating the Stelos needle. Whenever I visited the mills and called at the office, I always went back and looked at the menders to see how they were getting along, and they were always using our method. Those were not operators that we set up or trained ourselves and sent out on these jobs, got them jobs. The mills sent their own girls to our factory. They were not our employees.

628 *Raymond C. Storb. Called by Plaintiff. Cross.*

We trained them in our factory, and then they went back to their factory. We did have a training school, but the girls were usually furnished by the mills. It might have happened in one or two cases that we trained operators, and then afterwards got them positions in the mill, but not any more than that, I would think. As a rule the mills sent their own girls to us.

I do not know anything about the active business since I left it in the middle of 1929. From what you see in the stores the price of hosiery has gone
629 down since that date. I suppose the depression has hit the hosiery business like all other businesses. I do not know of anything about the falling of the price of silk.

We consider the Finch needle a bootleg needle. We considered a great many other needles that had no names. There was one, I believe, called the Torrington needle, that we considered a bootleg needle. There were a great many other needles that had no names that we considered as bootleg needles. I saw the Torrington needle. That was not a plain pivoted latch needle on a handle. It was a latch needle with another sort of a contrivance, sort of
630 a little offset on the thing.

I have seen the plain pivoted latch needles, needles that were used in reknitting. I have seen these in every one of the mills in competition with the Stephens needle while I was with the company. They were sold everywhere. You could buy them at the 5 and 10 cent store. And I would consider these bootleg needles. We considered everything was a bootleg needle where they placed the fabric on an egg cup or holder and then used a straight up and down motion, a pump handle motion. It was bootleg needle and this bootleg method, too.

You cannot use a bootleg needle in a method that does not interfere with the Stelos method. I think that you can use a legitimate needle with a bootleg method.

The only method that the industry could use as far as we knew and be absolutely free of this Stelos method claim was the finger method of reknitting the run, or the men with whom we were connected, that were in a whole lot better position than we were to know, the only method that had been used up until the time of the Stelos method.

My company did not tell all these mills and store 632
buyers that any one who punched through the fabric, was infringing on the Stelos claim. I have, myself; I do not know what the company did.

I did not use the patent claim 23 to explain it to them. I never used the patent claim. I used the word "patent". I obtained the information as to what the patent covered through what the patent showed. I read the Stelos patent before I went to some of the mills, but I did not read it to the mill men. I told them what I thought it meant. I don't know whether that had any influence with a lot of them. We afterwards made leases with many of them, but I do not think that necessarily means that
simply because we made leases with them, that we 633
scared them into it by means of the patent.

XQ216. You did not forget "patent" when you went to lease these needles to these mills? A. Why should we? Why should we?

They knew that we had a good needle without our telling them. They could look at it and see that it was a good needle after they had seen the way in which the needle operated. We did not have to tell them whether it was a good needle or not, because they knew that without our telling them about it.

In the beginning we never mentioned the patent. We began to mention the patent after the bootleggers came on the market. It was not after the Stark suit. I could not say exactly; it was about that time.

When I first showed this Stelos method to the mill people, they were first astonished about the speed with which the needle—the speed with which the mending could be done. That is to say, they were astonished at the speed with which the run or raveling could be mended. They were astonished about
635 everything about the patent from the needle to the punch.

Charles Chipman, who is one of the biggest operators of hosiery knitting machines in this country, visited me in company with his son in Philadelphia, and he there saw our process, our needle. I did mention magnetic to those people. It was one of the points. I probably told him that the magnetism from the latch, made the latch fly open and did it more quickly. I do not think we had that in our literature. Our company was entirely separate from Mr. Losh's company. What they did was not what we did. They were entirely different and we did not have anything to do with them. Of course,
636 we got information on things from him. We kept in close touch with each other.

I was at the suit in Washington and here. A suit was brought against a Rubner Needle Company up in our territory. When that case was called for trial, I was not sitting there in the Courtroom. I was not in the Courtroom ready to testify. I knew that the case was supposed to have been called, but I did not know just what they were doing. At that time I was 100 miles away from that point at that time they were calling their [illegible] in Philadelphia.

At that time I was 100 miles away from Philadelphia. I do not know any of the details about the calling of that case. I knew that there was a suit in my territory, but I was not there. I did not know anything about the case, because I was not anywhere near it when it came up for trial. I knew in a general way what it was about, but I was not interested in it at that time, because it did not concern me. I knew that a suit was being brought. I was nowhere near that. I was in New York City at the time. I am sure of that. I was in New York City at the time and I could not 638
know what they were doing in Philadelphia then. Other people were handling that suit, and I considered that they were handling it without my help. I was with the company when the case was brought, but I was not with the company when that case was called there. I have not been with the company since 1929.

Everything about the Stelos method that I demonstrated astonished those people, because it was an entirely new and different thing. In the first place, the egg cup; that used to get a laugh out of them. When the fabric was placed over the egg cup. They were all astonished with that. The
up and down pumping motion astonished them, 639
plus the construction of the needle, and most of all, the speed with which the work could be done. That was another astonishment; everything about it astonished and delighted them. The construction of the needle or the magnetism, and the guard, astonished them, among other things, of course.

I should say the magnetism plus the method in which it was used, gave the needle its speed. The speed of the needle is derived from the method of operation as well as the mechanical construction of

640 the needle. I know that to be a fact. You can go five times as fast, at least, if you punch up and down than you can if you punch over this way. I will take the Stelos needle, and by operating it up and down, you can go five times as fast as you can by operating it in any other way.

REDIRECT EXAMINATION BY MR. GILLIGAN:

641 In the loss of Gimbel Brothers' business to the Vanitas system, cutting prices also had something to do with it. When the Vanitas system came out, we were charging $50. a month and the Vanitas system brought out their machine for, I believe, $25.00 per month. We had to cut our price.

FRANK A. LOSH was recalled for further cross examination, testified:

CROSS EXAMINATION BY MR. WOOSTER (Continued):

642 I do not have the figures as to the yearly amounts spent for advertising by the plaintiff. We did not have a very considerable advertising expense until the year 1928. I do not know of any advertising that we did before the year 1928. We had each decree reprinted. I think we ourselves sent copies of the Stark decree to the mills. I could not tell how many copies we sent out. We had a mill directory and while we probably did not send them to every mill, we sent them to a great number. I could state directly the advertising expenses for 1928, but the information could be obtained and I would be glad to furnish it, the same for 1929

and 1930. After winning suits against Gearhart and Finch we got out printed copies of the decrees; we have had printed copies of every decree we had. I don't think we ever distributed them. We undoubtedly distributed some where we thought it would do the most good.

In the Runner Needle suit in Philadelphia, the complaint was against a pivoted latch needle, but I think there was something more than the plain pivoted latch needle, sold with printed instructions describing what we call the Stelos method. I do not think that case was called in open Court. Judge 644
Thompson was going on the bench right after lunch. It had been answered to start right after lunch, but I do not believe it was actually called. The Judge may have been on the bench and there was no other case ready; let us admit that it was. Then we discontinued.

The defendant there did not have prior use with witnesses ready to testify; possibly the attorneys for the defendant might; the defendant was dead. I think that the attorney for the defendant had witnesses there ready to testify as to mill practices. It was an individual defendant. I do not know if any affidavits were taken from any of those people 645
by Mr. Hodges or Mr. Gilligan; they might have, but if so I do not think I ever saw the affidavits, if they were taken. I do not know myself whether one was taken from Mr. Gearhart or Mrs. Rudy of Illinois. I have had no conference with Mr. Gearhart and Mrs. Rudy, after that. They might possibly have had a conference with Mr. Hodges or Mr. Gilligan, I do not know. I don't know anything about that.

646 *Frank A. Losh. Recalled. Redirect.*
Noah A. Stancliffe. Called by Plaintiff. Direct.

REDIRECT EXAMINATION BY MR. GILLIGAN:

I am pretty sure that Mr. Wooster was present in Philadelphia when all this was going on. I don't remember.

NOAH A. STANCLIFFE, called as a witness on behalf of the plaintiff, without being sworn, testified as follows:

647

DIRECT EXAMINATION BY MR. GILLIGAN:

I am secretary of the Kayser Hosiery Motor-Mend Corporation. At the time of the organization of the company, the stock was distributed in the manner I will give you in a moment. The authorized capital of the Kayser Hosiery Motor-Mend Corporation was 140,000 shares. Of those 140,000 shares 40,000 were preferred stock, having a preferred dividend and a participation with the common over and above the stated preferred dividend. Both the preferred and the common were no par
648 value. As stated, there were 40,000 shares of preferred stock authorized and 100,000 shares of common stock authorized. Cumulative voting was provided. The preferred stock in the case of default in a number of quarterly dividends also had the right to vote share for share with the common. The cumulative voting feature applied as well to the preferred as to the common, when the preferred had the right to vote. At the time of the organization of the company, the stock was distributed as follows:

George F. Handel—1,000 shares of common.

Hosiery Motor-Mend Corporation—16,000 shares of preferred and 48,900 of common.

Abeles, Reynell & Campion—2,000 shares of preferred.

Julius Kayser & Company—2,000 shares of preferred and 50,100 shares of common.

You will observe from that that there were 20,000 shares of preferred issued at that time and 100,000 shares of common. I might say parenthetically that that was the way the issue was made, the 48,900 650
shares of common of the Hosiery Motor-Mend Corporation and 16,000 shares of preferred were to be distributed by that concern in part to outsiders or people interested in the concern. There were 20,000 shares of preferred unissued. At that time, the Julius Kayser Company held 50,100 shares of common, which, of course, in view of the cumulative voting privileges, gave it control, which would go with the majority of the common stock.

Julius Kayser & Company has been in business since 1860 or 1870. It makes silk hosiery, silk underwear, silk gloves, also cotton underwear, cotton gloves, fabric gloves of various kinds. Its sales are for the most part direct to retailers. There has 651
been a store, for the last four or five years, on Fifth Avenue in New York City, which is operated by the Kayser Stores Company, the stock of which is controlled by Julius Kayser & Company. That, as far as I know, is the only retail store that the Kayser has in that fashion.

The original certificate of incorporation of the Kayser Hosiery Motor-Mend Corporation was filed in Delaware May 3, 1929, and the amended certificate was filed May 11, 1929.

652 *Noah A. Stancliffe. Called by Plaintiff. Direct.*

I have here a list of stockholders, preferred and common, certified to by the Bank of America, which is the transfer agent of Kayser Hosiery Motor-Mend Corporation dated October 31, 1929.

(Certified list of stockholders dated October 31, 1929 offered in evidence as of Plaintiff's Exhibit 27.)

I also have here a certified list of stockholders of Kayser Hosiery Motor-Mend Corporation that shows the stockholders as of the close of business,
653 March 19, 1931.

(Certified list of stockholders as of March 19, 1931 offered in evidence as of Plaintiff's Exhibit 28.)

All that I can tell about the stockholders is what I should find on looking through these exhibits. I do not see the name of Mr. Herman Gardner of the Phoenix Hosiery Mills of Milwaukee, Wisconsin on Plaintiff's Exhibit 28. We would have to go through the transfer agent's records from the date of the incorporation to the present date to ascertain
654 whether a particular man has been a stockholder.

Some of this stock was sold to bankers. I mean by that, the common stock which went to the Hosiery Motor-Mend Company; some of the individuals interested in that concern sold their stock or part of their stock through bankers to the public.

From the list of stockholders, Plaintiff's Exhibit 28, you will observe there are four sheets of names. I would say that there are more than forty names. There are 26 preferred stockholders, and about 26 common stockholders.

The Julius Kayser Company still holds 50,100 shares of common stock. It holds 2000 shares of preferred stock. None of the officers of the Julius Kayser Company, as such, own stock in this corporation at this time. I see on Plaintiff's Exhibit 28, Mr. Clarence W. Sinn holds 100 shares of preferred. Mr. Sinn is treasurer of the Julius Kayser Company. I think he acted as vice-president and also treasurer of the Julius Kayser Company. He was also an officer of the Kayser Hosiery Motor-Mend Corporation. Mr. Sinn has been away and I do not just know whether he has resigned or not. 656
He was treasurer of the Kayser Hosiery Motor-Mend Corporation a short time ago, anyway. The president of the Julius Kayser Company, Mr. Van Praag, and a vice-president, Mr. Mayer, are also similar office holders in the Kayser Hosiery Motor-Mend Corporation, and members of the Board of Directors of both companies. I do not think that there are any other officers or Directors of the Julius Kayser Company who are also officers or directors, of the Kayser Motor-Mend Corporation, unless myself, but I am not an officer of Julius Kayser.

Samuel Block was the manager of the Kayser Hosiery Motor-Mend Corporation shortly after it 657
got under way for quite a while. He was formerly and employee of the Kayser Store; he ran the retail store on Fifth Avenue. The Kayser Store is a subsidiary of the Julius Kayser Company. Mr. Block is not now manager of the Kayser Hosiery Motor-Mend Corporation. I believe he is abroad for Julius Kayser Company, if I am not mistaken.

The only advances by the Julius Kayser Company to the Kayser Hosiery Motor-Mend Corporation are the following:

658 *Noah A. Stancliffe. Called by Plaintiff. Cross.*
Noah A. Stancliffe. Called by Plaintiff. Redirect.

August 20, 1929	$20,000.00
September 16, 1929	$10,000.00
October 16, 1929	$15,000.00
January 9, 1930	$ 5,000.00
February 25, 1930	$ 5,000.00

That is all. There have been none since that time. Those are loans. They are not secured. I say that with this reservation, I do not know of any security. I do not handle the finances or accounts.

659

CROSS EXAMINATION BY MR. MORRIS:

There are 20,000 out of 40,000 shares of preferred stock of Kayser Hosiery Motor-Mend Company outstanding.

REDIRECT EXAMINATION BY MR. GILLIGAN:

That is true today. There has not been any increased issue. Of course, there are other persons outside persons, not connected with Julius Kayser Company on the Board of Directors of the Kayser Hosiery Motor-Mend Company.

660

Mr. Sinn is the only one of the officers or directors of the Julius Kayser Company who is a stockholder of the Kayser Hosiery Motor-Mend Corporation, as an individual.

BY THE COURT:

Q51. How about the control of the Board of Directors? How many Directors are there? Is it really a subsidiary of Julius Kayser & Company, so that there really is control of it, by their stock

ownership and consequently by electing a Board of Directors? A. I do not conceive that as being a subsidiary.

Q52. Is it not a subsidiary? A. It is not a subsidiary.

Q53. It has no control of them? A. They have control of the common stock.

Q54. And they have control of the board of directors too, I suppose. A. Yes.

Numerically there are more shares held by persons other than Julius Kayser. Other persons hold 18,000 shares of preferred stock, and 49,900 shares of common. Kayser holds 2000 shares of preferred and 50,100 shares of common. By reason of the cumulative voting and the position with regard to preferred voting, they conceivably could be dislodged. 662

There is no voting trust of the stock.

GEORGE J. CROSBY, a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GILLIGAN: 663

My address is 2032 Belmont Road, Washington, D. C. My position with the Stelos Company is general manager. I am a retired Major of the United States Army. I have been an American Consul.

The principal reason for the dismissal of the Stelos Company vs. Runner Needle Company suit in Philadelphia was because of some people who injected themselves into the defense of the suit in order to try to bring forth an issue, and force

us, as they said in their own language, to let them go along with us.

They wanted a license from us. We dickered all night in Philadelphia before the case was due to be tried. Mr. Murray and I were out there until 4:30 in the morning. They did not come in as parties. They dug up the defendant's attorney for the dead man. The result of this conference was the entering into a license agreement. They also put forward the complaint of this "man's widow", Mrs. Fleming, stating that inasmuch as the needles
665 that had been sold by them were no longer being sold, that she was merely operating a little shop, they would ask our consideration to permit her to go ahead. We took their word that she had no other means of support, and without hesitation, agreed to do so. The license agreement was agreed to the following morning early and put in writing three or four weeks later. We accepted each other's word. That is now in force. The name of this company is The Neumode Hosiery Company. They are quite extensive dealers in hosiery. They are an outlet for several mills, one of which is the Bear Brand Mills, or Bear Brand Hosiery Company, I am not certain. Furthermore, the defend-
666 ant was dead. The defendant was not a corporation. It was Fleming trading as the Runner Needle Company. I don't know whether it was sued as a corporation.

In defendant's exhibit F-44 and G-45, advertisements of the Stelos Magnetic Reknit System, that phrase was developed by me in an attempt to answer the Vanitas system advertisements that this is a machine age and hand work is passe. It was gotten out several months after the Vanitas machine, so called, started its national advertising,

and after considerable discussion with the president of the company, he permitted me to push the word "magnetic" which had never been pushed before. The tendency had been to keep it under cover, as far as practicable. We had never advertised as the Stelos Magnetic System prior to the advent of the Vanitas system. We also had that symbol copyrighted immediately after. The symbol of the Stelos Magnetic Reknit System contained the words: "Magnetic Reknit" in a ribbon joining two of the S's.

I have seen the Vanitas system of hosiery repair 668
in operation at Goldenberg's in Washington but particularly at a public demonstration to the trade at the Knitting Arts Exhibit at Philadelphia in April 1929. I went to that exhibit particularly to observe the public demonstration of the Vanitas system. I observed it very closely, and several times. I am familiar with Claim 23 in this case.

At the Knitting Arts Exhibit, there were three girls demonstrating the Vanitas system. It was the first girl closest to the rail that I observed. She had a stocking stretched over a holder which, in general shape, resembled an egg cup. She was holding that stocking around the holder in her left hand; when she started to demonstrate, she reached 669
for a device that was hanging on a small clip bracket. That device had a point at one end and a cable at the other. She pushed that device through the fabric stretched inside her fingers, over this holder, somewhere beyond the end of the run. The next thing I saw the run increase and stop at the needle. She then reciprocated the needle three or four times by hand. And I next saw her start to work without her hand moving, except for the vibration of it. She held that device at an

angle away from the fabric and off in what could best be described, I presume, as a natural writing position for pen or pencil. She did not complete the run. None of the demonstrators completed the run. They did not go all the way up. They opened up and went back again and then demonstrated again.

(Part of the Vanitas machine marked as Exhibit E in answer of Hosiery Motor-Mend and supplied by Frederick Schaeffer, offered as Plaintiff's Exhibit 29.)

671

The article marked Plaintiff's Exhibit No. 29, looks very similar to the cable connection that I saw the ladies use. It looks to me like the remains of a Vanitas needle which they claimed in their booths and national advertising that they were using. I believe the latch is broken.

I also observed the other girls and found that they were operating in the same manner although the two girls held their devices at different angles They were not all the same, but they all came within the general description of the convenient way of holding a pen or pencil. I can take Plain-

672 tiff's exhibit No. 29 and show just how the young lady was holding the implement.

When she first started to operate, she clamped her hand down over the holder, stretching the stocking rather taut. She pushed the needle through the fabric, holding the needle about seventy-five or eighty degrees above the horizontal. Then she started and reciprocated her needle, leaning her hand about twenty degrees sidewise and made sometimes three or four loops and sometimes it would run to five or six loops, as nearly as I could tell.

I went back several times. I spent the day going back and forth. She reciprocated everything she had in her hand. This was fastened to the machine. She was reciprocating the needle up and down by hand, to get it started; then she held her hand practically still, except for vibration, and the device was jiggling along itself and, as I looked along behind it, I saw the run change to a restored knit or knitted fabric. She never finished the whole run; none of the operators did that there. I asked them why they did not finish it. They said that the one who knew how to do that was not there. 674
The other two girls operated about the same as this one who sat near the rail that I observed, the only difference being in the degree of slant of the right hand, as far as I could observe. There was not more than twenty degrees variation in the slant. The girl nearest the rail held it nearest to the vertical; she held it higher than the others. The angle was about seventy degrees from the horizontal plane, and that is just about the way people would hold their pens and pencils. Some people will hold it in different manners, in all sorts of strange positions. We have no two girls who hold the needle in the same position. We have one girl, for instance, who holds the needle at almost a vertical, 675
if not a vertical, position in all directions. Others will hold it over this way or that way. They hold it over almost as low as 40 degrees, I believe. No two girls will hold it exactly the same, at the same place.

When I saw the girls holding their needles as they were stopping, they held this little device here in this manner (indicating). I saw it operate in this manner.

In connection with my duties as manager of the Stelos Company, I watch the trade publications for

national advertising, particularly. We were particularly interested in competitors who used national advertising, especially those that we felt might be infringers. In connection therewith, I made it a practice to keep a file of certain advertisements that I had seen and took from those papers. I kept special files of the various infringers and I had the special files in my office, I had a file on the Motor-Mend, the Kayser Hosiery Motor-Mend Corporation, and so forth, until a couple of weeks ago. I can identify advertisements that I
677 have seen and cut out, because I signed my name on all that I produced.

I identify this clipping from "Women's Wear Daily," a trade publication, to which we are subscribers. The clipping was torn on the table here yesterday morning. It is dated May 3rd, 1929.

(Folder of advertisements marked for Identification as Plaintiff's Exhibit No. 30.)

This is a letter which was received by Horne & Company of Pittsburgh, from Kayser Hosiery Motor-Mend Corporation. It came to me from one of our franchise holders, Horne & Company of
678 Pittsburgh, sent in by Mr. Robert J. Bassett, who is specially in charge of the hosiery repair department for that corporation.

(Letter offered in evidence against Kayser Hosiery Motor-Mend Corporation as Plaintiff's Exhibit No. 31 but not against Julius Kayser and Company.)

(Recess at 1:00 to 2:30 P. M.)

679

CROSS EXAMINATION BY MR. MORRIS:

I never operated a Stelos needle, and never illustrated it to anybody just how we do that, nor have I ever said I knew how to do it.

I have a common sense viewpoint of the plaintiff's method. I tried to be especially careful not to say that the Vanitas method that I saw in operation was the employment of the plaintiff's method. I tried to tell exactly what I saw at the Knitting Arts Exposition in Philadelphia. I believe the name of the building is the Coliseum. That was in April, 680
1929. I saw three girls in a booth that was labeled in large letters on a sign in the back part of it: "Hosiery Motor Mend."

I had something to do with the sending out of advertisements of what we have called the Stelos System.

I recognize this document as one of them; I recognize both sides of it. I recognize that as having been circulated by the plaintiff herein; it says, printing Judge Stafford's interlocutory decree in the case of Stelos Company, Inc. vs. Finch Corporation, and at the bottom of the decree it is stated briefly that Claim 23 of the Stelos patent referred to 681
means working through the fabric with a pumping motion, the only commercially profitable method for repairing hosiery.

(The document was marked for identification as Defendant's Exhibit H-46.)

What I was talking about was advertised as the Vanitas system using a sliding latch needle. I did not get down to examine the needle in the girl's hands. The one operator that I talked to said it

682 *George J. Crosby. Called by Plaintiff. Cross.*

was the Vanitas sliding latch needle, both in Philadelphia and in Goldenberg's, Washington, D. C., I did not handle the needles. I was told they were the Finch sliding latch needles.

The needle was inserted in the fabric behind or in prolongation of the run with the run a little bit behind. I could not actually see where it was inserted. I was not so close and did not have a microscope. The device was inserted through the fabric while held at various angles by the three girls at different times, at a considerable angle from
683 the horizontal. I did not notice how far through the fabric the needle was inserted. I could not say if that movement of insertion through the fabric continued until the loop had slid back over the end of the latch and beneath the latter. It was a very fine silk thread—an extremely fine knitted fabric and the girl was inside the rail. The same limitations as to distance applied in the case of the observations at Goldenberg's. I don't know what happened when the movement was reversed. From actual observation or what occurred down in the fabric or underneath the fabric, I do not know, because I could not see that. I do not say that I know that the next forward thread was caught in the
684 hook, because the run was changed and reknitted fabric after trailing up behind the device. I knew that there was a reciprocating motion of the hand, and such a motion produced by a machine through the fabric. I think perhaps I may know a little more than that. I testified to a few things more than that. I saw several things.

In the operation of the needle, I limited myself to repeating only what I clearly saw and clearly remembered, and I think the record will show that I testified, as far as the needle was concerned, only

to puncturing and reciprocating it through the fabric, first by hand, then holding in her hand while a rotary motion from a small motor there changed to a rectilinear motion, operated the device back and forth. That applied to every operation of the so-called Vanitas system that I have seen.

CROSS EXAMINATION BY MR. WOOSTER:

I am not sure that I have the contract with the Neumode Hosiery Company around. I did not look through the papers. I took everything out of the safe. We did give the Neumode Company very special terms for the licensing of the needles; that was what the long discussion was about. They were reduced terms in one respect; in another respect we felt that we were better off, and that they were better than we had got from anybody else, in that we were in the status of a licensor and a licensee, and were working with a company, these people, who knew more about the mill business than we knew. Our company knew nothing about it. They agreed to cooperate with us and help us along and push our product, in a business which they knew much about; an industry which they were particularly close to, and an industry that we knew nothing about, that we were practically ignorant of. That was the main consideration, and we thought it was a very good one for us. The selling point for this contract was not particularly the idea of installing these needles in that chain of hosiery stores. It had not impressed me that way at all. They talked big but that was a matter of salesmanship; that was just a selling proposition. 686 687

We neither leased the needles to them on the basis of so much per needle per year, nor some roy-

688 *George J. Crosby. Called by Plaintiff. Cross.*

alty per run repaired. We leased them the right to use the method for a consideration. We had an additional agreement to furnish them with a certain number of needles in connection with certain amounts that the method royalty might represent. We did that by a separate agreement, after they had a separate royalty agreement on the method. We leased them the needles in the same agreement. We did agree that for every certain multiple, which we would not prefer to mention unless it is necessary —we would not like to make it public unless it is
689 insisted upon, because it is really a commercial secret however, we did agree for a certain amount, for every certain amount of royalty on this method that we were to furnish them needles. I do not recall whether they agreed to use only the Stephens needle. I do know that we licensed them to use the method and not the needle. There were needles furnished them. I have not been in any of their plants. The royalty payable by them for the use of the method without the needle is commercial information. We do not like to publish that to our competitors, if it is not necessary.

They agreed to pay the money, where they used this method with some needle other than the
690 Stephens needle. We are receiving it in many of their checks now, in money. I just got one the other day.

Their check would not separate the royalty they paid us for using the Stephens needles, from the royalty they paid us where they used some other needle that I know of. I do not think that has ever been their practice. This royalty is for the use of the method for so many dollars a month royalty, and we have agreed to furnish them needles. The primary feature of the contract is the leasing or

licensing them to use our method. That arrangement was made about January, 1930. It was made the night I talked with Mr. Murray in Philadelphia. It was made orally at that time; we were satisfied to take each others word for it. That is the only arrangement we have of that kind. That was not due to special circumstances of that case. These negotiations started months before these people ever heard of the Runner Needle case, and when I had forgotten, practically, there was such a case. Months before that they had endeavored to get a license from us. They were trying to sell us on the 692 value of their association being worth something to us. We did not think it was worth so much before that.

At the time we went into Court, it was extended to a later time at the request of both sides, from the morning to the afternoon, and it is my impression there was an extension from a previous day also. I am not sure of that. There was an extension there, because the Court was informed that there was an excellent chance of the two parties getting together.

The words "Stelos Magnetic Reknitting System" were first used in advertising by the plaintiff in 693 the early part of 1929. As far as I know I was the one who originated that expression or phrase "Magnetic Reknitting". I might be mistaken about the year, but the invisible mend circular, Copyright 1928, was about the same time. As I recall the two things they were very close together. I might be a little hazy there, as I did not expect to be interrogated on the flawless mend. If the word "Magnetic" had been used previously by the company in its literature and publications, it was to such a minor extent that it was scarcely noticeable. The

694 *George J. Crosby. Called by Plaintiff. Cross.*

word may and could have been used in correspondence, but as we did no national advertising, it could not have been in that form. I do not know if it was used by the people who went out to sell for us. I rather doubt it, because it had not been the policy of the corporation. I was not in accord with the policy, that was why I know. I had been hammering at them very hard to use that phrase when the competition started.

Magnetism, undoubtedly, is one of the advantages of the Stelos needle and the self-opening feature is
695 also, undoubtedly, quite an advantage. From my common sense knowledge, I believe that the guard in the Stephens needle is an advantage.

I am the general manager of the company and have been for some time. I would say, from the standpoint of the Hosiery Repair Industry in general, that the most important thing was the development or change from the slow and tedious operation over the finger, with the thread having to be watched all time, as I have learned from getting knowledge through the industry.

I would say that in this business, the process by which the needle is elevated and goes through with
696 great rapidity of movement and speeding up the repair, I would say that is the most important thing; and as we have stated in our advertising literature, changing a losing service to a profitable industry by the evolution of this knitting device, and the method of operation is particularly so that it goes through the fabric from one end to another, that is to say, goes through the fabric from the top to the bottom, and does not catch on the threads as it does so, producing a rapid, accurate and satisfactory method of reknitting runs or ravelling in hose. In the Stelos needle, the magnetism and the

guard comprise about the whole needle. These features of the needle could not be minor parts of the needle because they are parts of it. They would be minor things in connection with the process for repairing hosiery in this suit.

MRS. HELEN A. HARVEY, a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GILLIGAN: 698

My name is Mrs. Helen A. Harvey. I live at 71 Bedford, New York City. I am not employed at the present time. I was connected with the Stelos Company up until the first of February, 1931 from December, 1929. I was the manager of the New York office of the Stelos Company, Inc. from April, 1930, until February 1, 1931. I left my position at that time to close the New York office.

I saw the Vanitas system of hosiery repair in the City of New York. I am not sure of the month, but it was in 1930, either April or May, that I went to the Colonial Hosiery Company, 1529 Madison 699
Avenue, and saw the Vanitas system in operation. That was April or May, 1930. That was the first time I had seen it. I have seen it since then. On November 26th, 1930 I saw it at Berger's Cleaning and Dyeing establishment, at 11th St. and 7th Avenue.

I have operated the Stelos Method and understand its use, so that I know what the Stelos Method and Stelos needle are.

I observed that operation of the Vanitas System, at the Colonial Hosiery Repair Company, New York

City. The system consisted of a cup holder, and a Vanitas motor mend device, which operated by electricity. The girl put the holder all in the same manner in which we operate our system, stretched the stocking over the cup, and inserted the device before the motor had been turned on, into a stitch or two, or even may have been three or four behind the run, and worked it by hand, and took the first stitch or two off, looping one or two loops. Then she started the motor and run the rest of the run by the reciprocating motion, only the reciprocating
701 motion instead of being by hand as we do it, it was done by the electric motor. Those were all the operations I did observe, and they have all been the same.

That was at 1529 Madison Avenue. The observation at 11th St. and 7th Avenue was at a later date, on November 26th, 1930; and I observed it again at Gimbel Brothers on January 8th, 1931. The first observation I made at the Colonial was in April or May, 1930. The girl held the operating device at an angle off the plane of the stocking in the same position one would hold a pen or pencil. I cannot say that I knew definitely the name of the company that was operating it. The machine was not
702 marked in any way, outside of the cards that they have for distribution. I do not think it says whether it was the Kayser Motor Mend or not. It simply said the Vanitas system.

Exhibit 29 is the same kind of instrument that I saw at the Colonial place. There was a motor attached to it; I saw it. All of this was in New York City, Borough of Manhattan, State of New York.

CROSS EXAMINATION BY MR. MORRIS:

I know the Stelos Method; it is Claim 23 in the patent. I think it involves a stretching over a suitable holder, and working through the fabric with a reciprocating motion, nothing else. The Stelos Method to me would not necessarily mean the Stelos device. I am not familiar with the claim.

XQ57. I cannot conceive of that being true. Will you show me? A. Do you want to do it, or shall I do it for you?

XQ58. You just do it for me. I think it is entirely possible for a pivoted latch, but wholly impossible for a sliding latch. A. I would like for you to repeat your question, what you are asking me. 704

XQ59. Do you want to keep this part of claim 23 before you? A. It does not make any difference.

XQ60. Continuing the forward movement until the loop has slid back over the end of the latch? A. Wait a minute.

XQ61. Continue the forward movement until it has slid back beyond the edge of the latch, and beneath the latch. That is only half way over the latch now. A. Only half way?

XQ62. You see it is at the end of the latch and not beneath the latch, don't you? A. All right. 705

XQ63. Did it slip back "until the loop has slid back over the end of the latch and beneath the latter"? A. Why, Judge Morris, I didn't discover what the latch was doing, because it was going so fast in the machine, that I could not possibly see through the thread and tell what was happening.

The loop slid back over the end of the latch and beneath the latch, as I remember it. It slides back on the latch, back of the hump here. I do not know what the technical name of that little hump is. It

could not very well slide beneath it in this way, not with this needle. I do not know if it could with this Vanitas needle, or not. I do not know the Finch needle. I have seen it, though. I know it by seeing it, of course.

This is simply an enlargement of the Finch needle. You can slide the loop back over the end of the latch of the Finch needle. I think it slides back over the end.

XQ79. Now, won't you use a plain latch needle just a moment? A. All right.

707 XQ80. Now, will you take a stitch through there, please? A. All right.

XQ81. You can put it here probably, and operate it a little better. A. Yes, sir.

XQ82. When you have it down at the fully forward position, what has the loop done? It has slipped back over the full length of the latch after the turn, or full open position, has it not? A. Yes, sir.

XQ83. And it has also slipped beneath the latch, has it not, behind the staff of the needle, or rather upon the staff of the needle on the fully opened latch? A. Yes, sir.

XQ84. You see that? A. Yes, sir.

708 XQ85. You see it has slid beneath the latch upon the staff of the needle on the fully opened latch? A. Yes, sir, that is true.

CROSS EXAMINATION BY MR. WOOSTER:

I had nothing to do with reknitting runs before I was employed by the Stelos Company. I first took a position with them in Washington, D. C. I was taught the method by Mr. Frank C. Stephens. I have followed what I was taught. He did not tell

me to read Claim 23 in suit, nor to look at the pictures in the patent and do what the pictures said do. He did not give me any written instructions. He showed me by working his hand up and down.

I have been sitting in the Court room since the case started, and have been listening to everything said. I heard Mr. Stephens testify. I heard Miss Gibson testify and saw her demonstrate the needle. I saw Mr. Stephens do it the same way that Miss Gibson did. I could do it the same way Miss Gibson did. My hand could be at a little different angle from Miss Gibson's; we have never compared 710 our angles.

At the Colonial, I was just as close to the machine as I could possibly get. I just saw the girls do the work; I did not try it myself. I examined the equipment very closely. I examined the needle and the way they were stretching the stocking over the holder. They stretched the stocking over the holder and let go or moved it forward in the same manner Mr. Stephens did. They moved the stocking forward in the same manner that the Stelos method does. That was what I saw.

711

STANLEY W. FINCH, a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GILLIGAN:

My residence is Washington, D. C. I am president of the Finch Corporation, which was sued by the Stelos Company, Inc., in Washington, D. C. and against which company, the Stelos Company

712 *Stanley W. Finch. Called by Plaintiff. Direct.*

have an interlocutory injunction and decree of the Court of Appeals. We granted a license under the Finch patent, owned by the Finch Corporation, to the Vanitas Company, sometime ago. My recollection is that there was an agreement to an assignment from the Vanitas Company to another company. I think it was the Hosiery Motor-Mend. I remember giving testimony in Washington, but I do not recall exactly as to assignments of the Vanitas agreement to the Hosiery Motor-Mend and afterwards the Kayser Hosiery Motor-Mend, and I have
713 refreshed my memory recently by reference to a contract to the same extent, that the original contract was with the Vanitas or group of people. I think Vanitas Company was one of the signers of the agreement. I notice the indorsement in my own handwriting as President of the Finch Corporation, the consent for the assignment of that agreement to another company, which I think was the Hosiery Motor-Mend Corporation. I have a photostat copy of the agreement in my brief bag, and, in order to testify in detail, I would like to refresh my memory from it. We do not still furnish the Kayser Motor Mend Corporation with needles.

714 I have been in the office of the Hosiery Motor-Mend Corporation in New York City, on 34th Street, I don't remember just when. I believe it is the office of the Hosiery Motor-Mend Corporation that I visited. I have not been in it for more than a year, not since before the trial of the Finch case in Washington, in the New York office of the Hosiery Motor-Mend Corporation, I have seen what I understood was the Vanitas machine, the one that was operating the Vantas needle in the office of the Hosiery Motor-Mend here in New York. Plaintiff's Exhibit No. 29 has the same general appear-

ance as the one I saw being operated in that office. It looks like the remnants or a portion of a Finch needle; the hook is broken off, but the latch is intact. I saw one of the so-called Vanitas machines operating a sliding latch needle, which was in accordance with the terms of our Finch patent—so-called Finch needle—sliding latch needle.

It is my recollection that that holder is of the general shape but somewhat smaller than the one that I saw used in the office of the Hosiery Motor-Mend Corporation, at 40 East 34th Street, in New York City. The operator had some sort of holder, more or less like this. I believe it is made of aluminum. The run was stretched over one end of the holder, I do not know which end and was held by the left hand so that the end of the run was over the top of the holder, the hose being held by the left hand of the operator; then the device holding the needle was held in the right hand of the operator and the hook of the needle inserted in the fabric back of the free loop. I have no definite recollection as to how many loops back of the free loop. It went back of the last loop because it was impossible to insert it through the last loop. The operator was careful not to stretch the fabric before inserting the needle because if the fabric was stretched, it would increase the length of the run.

The needle must be inserted while the fabric was not stretched, because the run increases at the slightest pressure. I am very familiar with this operation, because I run the needle myself, the Finch needle, of course, and it is impossible to insert the needle while the fabric is stretched. It must be while it is loose. After the fabric is stretched and the needle is inserted—I mean after the fabric is placed loosely over the top of the holder, and

718 *Stanley W. Finch. Called by Plaintiff. Direct.*

the needle is inserted back of the run, then the operator began to stretch the fabric so as to cause loops to form around the needle. The needle was not placed through any loop. There was only one loop to the run; it was impossible to put the needle through that loop, because there was only a very small point there, and it was impossible to put it through that loop, while the fabric was being stretched, because the stretching would cause the extension of the run, so the girl placed the needle while the fabric was loose over the top of the
719 holder, back of the loop in alignment, then stretched the fabric, and caused additional loops to form until a loop formed around the needle. In other words, she ran the run to meet the needle. That is the process. At that time, the needle was already in there; instead of putting the needle through the last loop of the run, she formed the loop around the needle. That is always the case in repairing runs, in my experience.

Then she pushed the needle down through the fabric until the loop which it formed around the needle, slipped up over the hook and against—this is the first insertion—at the time she inserted this needle in the fabric. The hook is always closed at
720 the time, previous to the insertion of the needle in the fabric, with the Finch needle. Now, I will form a run and show the way it goes. I never hold the needle off to the side for the reason that if I held it off to the side with this needle, it is apt to miss the next thread. The notch in the latch brings it back normally below the next thread. This is in proportion to the regular one. I made this myself and I measured the number of threads with the normally pivoted latch needle that would go under the thread. I have a number of latch needles that

are of normal size, and also of Finch needles of normal size, and I can show that this was made after careful study of the number of threads that go on the pivoted latch needle—would go under the pivoted latch needle in order to get way back over this latch, and goes under more threads than this does, way under that. There is a fabric; I push my needle with the latch closed into one of the runs. I cannot put it through that, through one of the runs and bring it back. Then in doing that, the latch is closed, I put it through there and that thing comes down and that slips in.

722

After it goes over the loop, it hits the latch and opens it, and then goes up the sliding surface at the end of the latch and enters the cross notch on top of the latch. There is an abrupt shoulder which prevents the latch from slipping down and prevents the needle from going too far through the fabric, so as to leave it, because this works automatically, leaving it automatically under the next cross thread. The hook of the sliding latch of the Finch needle is very much longer than the hook of the ordinary pivoted needle. In fact, the hook itself resembles a simple portion of the end of the latch.

723

It is on the down stroke that the loop is clamped up the surface into the latch, the position of the needle is, the hook is open and the point of the hook is directly under the next cross thread, so there is no possibility of getting under any other thread, because the action of this needle is very short. Then the movement is to simply bring it back, and the movement on the latch synchronizes with the movement of the needle. If I start to bring it back, the latch starts down and if there is any mistake, if I have not picked up the next cross

724 *Stanley W. Finch. Called by Plaintiff. Direct.*

thread, I simply move it down and pick it up, if I missed it and catch it in time, so the latch follows the movement exactly.

The latch closes the jaw, bringing it down. The first action is to bring down the latch, which causes the hook to enter an opening in the beveled face of the latch, so closing the hook, leaving no rough surface to catch the thread; then I continue to pull back until the loop climbs up the sloping surface of that notch onto the top of the hook, pulling the loop through to form a new loop.

725 Now, the second operation is different from my initial operation. That is the operation to take up the second stroke, or second thread after the initial operation; my hook is already in the last loop and I do not form any loop around the hook. I push it through. At that time the loop is down at the bottom of the slanting surface of the latch, and it first opens the latch, then it starts climbing up the latch, and I push still further and it slips up the slanting surface of the latch and there is an abrupt shoulder which prevents me from going too far, and grasping any other thread. The tension will bring it back normally when the thing is held in normal position, will bring it back over the next thread.

726 That is simply repeated, and with my needle, the ordinary needle, it is simply automatic.

Now, the needle that I saw operated, knowing the details as I do, all the details of the needle, and of the operation of my needle, which at the time I saw it, was using a needle that the Vanitas corporation had made, the operation of the needle used on 34th Street with the machine, that appeared to be a Vanitas machine, the company that we have licensed, was exactly as I stated. In order to make this operation, I think it should be stated for the

benefit of the Court, that in order to have this operation successful, it is absolutely necessary that there be a certain slanting to the needle, with reference to the surface of the fabric. That is not subject to variance by the operator, except in this way, that the operator may stretch the fabric lengthwise so as to open the distance between the runs, but if she does that, she must bring the slanting of her needle down so that it will catch the next one. I am talking about my needle, or any pivoted latch needle. I was first interested in pivoted latch needles, the Howe needle. It was a pivoted latch 728
needle, and I am quite familiar with it, and I say with any needle, whether pivoted latch or sliding latch, while there may with the pivoted latch needle be some variation as to size, with this needle, still this angle here is fixed by the distance those threads are apart, as I can show by a regular hose. In other words, if you have it down too far, you catch two threads, unless you bring the fabric wide enough apart. The angle depends altogether on the fineness of the hose and the manner in which it is stretched. I have not heard that part brought out in this case, and I think it is very important.

With my needle, if you hold it at the right angle, 729
it will invariably stop under the next thread; if you have no regard for any angle and bring it down here, you might catch two threads—I have not heard that brought out, and to my mind that is very important. Any statement that an operator may have the position of the needle any way she wishes, depending entirely on the whim of the operator, whoever testified to that, may think it is true, because they have not made a study of the facts.

730 *Stanley W. Finch. Called by Plaintiff. Direct.*

They must hold it with the pivoted latch needle, unless they know just how to stretch it; otherwise, if they hold it straight ahead with the needle, such as used way back in 1927, when there were none of these very fine needles in use in repairing runs,—they were about like the ordinary machine needle that they would hold straight, and the hook would be liable to catch too many threads, so in order to get greater distance, they brought it to the side and with some they had to press it against the side in order to get room enough to avoid getting a much
731 higher run on the ladder than you wanted.

I have described the operation on this frame, with this needle that I saw at the offices of the Hosiery Motor-Mend Corporation. I was talking about the operation that I saw on the Vanitas machine, the needle functioned in exactly the same way as I have described on this frame. In other words, the holder of the Vanitas machine holding the needle with the thin vise at the end of it, the hook was placed through the fabric back of the last loop, then pressure was used on it to the loop, pressure put on the stocking causing a run to go back around the needle, with the loop in the cross notch, then
732 continuing the tension on the fabric, the needle was pushed forward; the hook picked up the next cross thread and during the backward movement of the needle, the latch closed over the thread; the thread was pulled through the loop to form a new loop. That is always done by hand for that first stitch. Then the second stitch, the loop was already in the hook, still by the hand the needle was pressed forward and the loop that was in the hook slipped up the beveled face of the latch into the cross notch, leaving the point of the hook under the next ad-

jacent cross thread. Then that movement was repeated, maybe two or three stitches, for this purpose, which I have just explained, because it was necessary to adjust the angle of the needle in accordance with the ladder. So when the operation was repeated in the same direction by the machine, the needle would automatically pick up the next cross thread. If the girl got the needle too straight up in the air, it would immediately miss it entirely, if she got too far down it would pick up two or three, so she took those two or three stitches to determine the extent to which she would stretch the 734
fabric and the angle at which she would hold the needle when she was operating by electricity. That machine method was continued, with the power on, until the run was looped across the surface, then the entire tension was released, with the needle still in the fabric, to prevent another run; she pulled the fabric back to the opposite side and again got the tension on the fabric, my recollection is, after they once got that angle, they seldom have to take preliminary stitches because they have their hand set, and ordinarily after the first insertion in getting the handle at the right angle, they sometimes bring it over by the hand and go right along. 735

I very seldom saw them finish the run. My needle was not particularly involved in that as to what they did.

There is one thing that I omitted to state, and that is in connection with a double run, that is where there was more than one loop, and there almost always is; in fact, I omitted the very first step in the repair of a run which they do there, and always did, that is to say, when there is a break in the hose, it is customary and I saw them do it there,

to take a thread of another color possibly white, with an ordinary sewing needle, and here, for instance, put the needle through all the loose loops, so as to prevent any other loops from developing. In other words, if they would undertake to bring up this loop here, one of the loops, where there is a double run, by the time they got up to the next run, these would run down, and by the time they got up here all these runs would develop. In order to prevent that, they always put a loose thread through there around here, and around there, in
737 order to catch all the loops that are still near the hole. Then they take a pin and put it through any loop that happens to be alongside the loop they want to prevent that loop from going back. Then they would start back with the run on the right hand side and bring that up to the holder and pull with that needle, pull through the loose end of this thread, and keep that loop from bringing back—. The motor would be stopped when they were pulling it through. Then they would go back and stick the needle back of the pin, holding these other loose loops, take the pins out, and run that loop up and pull the thread through there, so as to
738 hold it, then they would turn the stocking around and proceed in the same manner until they bring them all up here with this thread through each one of these loops. Then they take an ordinary thread of the same color and make a special sewing of that hole, so as to leave no sign of a mend, except a very faint line there. That would be by hand. That is always done with a separate Finch needle, one of the hand Finch needles, and that is what I saw in the Rand House with a machine needle.

Our lease did not call for the furnishing of a great many hand Finch needles. I am sure of that.

I have a copy of a lease with me and I remember that distinctly, because we were very particular that they should not use our needles except in the machine, and we have a provision in our contract or license agreements, the original license agreement provided that the licensee must use the Finch needle exclusively in all those machines, and that they must put out a certain number of Finch needles maintain a certain number of latch needles with every machine they put out, and if at any time they failed to continue to use the Finch needles under our license agreement, the money they paid 740
became liquidated damages,—the first sum of $25,000.00 cash they paid us became liquidated damages. There was this provision also, in fairness to the plaintiff, I should say, there was a provision in the license agreement that authorized them—there was an agreement to the effect that they could train girls in the use of their machine and we would furnish not to exceed one hand needle for each machine, one hand Finch needle for training purposes only, but not to be used in the commercial work. They were limited to the use of that hand needle, simply for training purposes.

I have never seen commercial operation of the 741
Vanitas needle. The only operation I saw was the demonstrator's operation in the office on 34th Street. That was the office, as I understand it, of the Hosiery Motor-Mend Corporation, the Kayser Hosiery Motor-Mend Corporation. This was before our license agreement was made. I may have seen it once or twice after the license agreement, however. It was sometime in 1929.

I am looking at a photostatic copy of the original license agreement made by the Finch Corporation

742 *Stanley W. Finch. Called by Plaintiff. Direct.*

with the Vanitas Company, Inc. and others, dated on the 12th day of November, 1928. On the 12th day of November, 1928, as President of the Finch Corporation, I consented to an assignment of this license agreement to the Hosiery Motor-Mend Corporation of Delaware. That was on the same date —November 12th, 1928. I remember now that it was the same date as the other. I remember that it was all done the same day, in their offices that I endorsed this consent to the assignment to the Hosiery Motor-Mend Corporation.

743 I think there was a further consent to transfer to the Kayser Hosiery Motor-Mend Corporation. I have what purports to be a typewritten copy, unsigned of a consent by the Finch Corporation to an assignment by the Hosiery Motor-Mend Corporation. It consents to an assignment to a corporation to be formed, it did not give the name of the corporation to be formed, to acquire the assets of the Hosiery Motor-Mend Corporation.

This consent is as follows:

"KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Finch Corporation, a Corporation of the State of Delaware, for and in
744 consideration of the sum of $1.00 and other good and valuable considerations, do hereby consent to the assignment of a certain license agreement between it and J. R. Harbeck, B. M. Latham and Vanitas Company, Inc., dated November 12, 1928, as modified by agreement dated November 15, 1928, by Hosiery Motor-Mend Corporation, a corporation of the State of Delaware, to a new corporation about to be formed for the purpose of acquiring the assets of Hosiery Motor-Mend Corporation, pursuant

to agreement between said Hosiery Motor-Mend Corporation and Julius Kayser & Company, pursuant to which agreement—"

I don't remember that ever being executed. I think that was something that was never executed. It was not signed. I don't remember ever executing it. This was in April, 1929. All that I have here is the original agreement and amendment. These others are forms which were never executed.

I really haven't any recollection as to whether or not I was here in New York at the time I ex- 746
pected that to be signed. I don't remember about that except that I find it here amongst some copies of papers that are actual duplicates.

Q60. Of course, you would not have that among your papers of a corporation to be formed, as Julius Kayser Company, unless there was some reason for it? A. I really don't know.

Somebody must have prepared it. I don't think I prepared it, I don't remember.

The new corporation, Kayser Hosiery Motor-Mend Corporation, was organized May 4th and the assignment of the Finch license by Hosiery Motor-Mend Corporation to the new corporation with my 747
consent was executed about May 17th. I don't think it was executed in the same offices of the Hosiery Motor-Mend Corporation.

Q65. You have been in the offices, have you not, in all the offices or whatever offices you executed it in? A. I don't remember.

Q66. If it was in the office of Julius Kayser & Company, were you there? A. I don't know; it may have been sent to us in Washington; probably it was. I have no recollection of signing anything or being here to execute this original agreement

748 *Stanley W. Finch. Called by Plaintiff. Direct.*

and the amendment to the agreement. I know I was here about that time, but I don't recall being here to sign any other agreement. I was here, I know, shortly after this agreement was executed, when I saw the operation that I described here.

The Court: That was before the Kayser Hosiery Motor-Mend had been created?

Mr. Gilligan: That is correct.

My idea is that I did see the Vanitas system in operation in the offices of Kayser Hosiery Motor-
749 Mend Corporation at some time or other after that company had been created, but I could not tell just what date it was. I think I was there sometime between May and fall of 1929. I am not sure whether I went to the office of the Kayser Hosiery Motor-Mend Corporation in New York after the opinion of Justice Stafford. I am inclined to think that I did. I do not remember the circumstances, but I think I might have done it. I know that we immediately discontinued making the needles and did not furnish any other needles to them after the decree was entered.

I do not know where they get Finch needles now.
750 We do not furnish them. I have not seen them.

In the transcript of the record in the Stelos vs. Finch case in the District of Columbia, Plaintiff's Exhibit 4 says, "Profitable operating Vanitas electric hosiery repair department (single units may be installed to meet your requirements.)" I cannot see the needles at all there. I cannot see any of those needles; I cannot see the hands of the operator. This seems to be the same picture which was an exhibit in the Finch case in Washington. It looks like the same picture. I think it is. I don't

know anything about the folder. I never saw it before. I may have seen the picture.

When I went to the place of the Kayser Hosiery Motor Mend Corporation at 40 East 34th Street; I did not see a lot of girls working at this repairing. My only recollection is that I saw one girl or two girls out in the outer office once or twice operating, but no such line of girls as that. I never saw a sign just like that. As I recollect it, at the time when I saw the details of the operation, I asked the girl to show me how she ran the needle. It looked very much the same as the girls in the foreground 752
of the picture. I cannot tell the position of the needle from this angle, except the angle from the fabric looked to be the ordinary position. I cannot see the run; I cannot tell whether or not it is off to the right. It all depends on what position she was holding the run. A girl may hold the run as they often do when operating that style of needle, it is over the right shoulder, still it is in line of the run. They seem to get a faster motion this way than this way (indicating). So the position of the needle with reference to the shoulder does not indicate anything at all with reference to the run.

I said I am rather inclined to think I saw the 753
Vanitas System operating in the office of the Kayser Hosiery Motor-Mend Corporation, as well as the Hosiery Motor-Mend Corporation, but I do not absolutely remember. I never have seen the Vanitas system operate at Julius Kayser & Company. I have not been in their offices since long before I made this license agreement. I was in there a little at one time, way back in 1926. Julius Kayser & Company were not a party to the agreement I mentioned here.

754 *Stanley W. Finch. Called by Plaintiff. Direct.*

We consented to the assignment from Vanitas to Hosiery Motor-Mend and my recollection is that we also consented to the assignment from the Hosiery Motor-Mend to the Kayser Hosiery Motor-Mend, but I don't remember distinctly when that was signed.

I know I saw an operation of the needle when I was trying to make a deal with the Vanitas Company, before any other was formed, when I was there. I think their headquarters were on 34th Street, the first time I ever saw the Vanitas machine, I had the Vanitas people trying out my
755 needle in their machine and they tried it out and used it.

Previous to that, they had been using a pivoted latch needle. I do not know that of my own knowledge, except I saw them—I don't know that they used it commercially, but I did see them with the needle in the machine before I made a deal with them. Then they tried out my needle and found it ran pretty well in the machine and we negotiated this license agreement where we gave them the exclusive right to use our needle in power operated machines, reserving all rights for the operation of the needle by hand, except those few needles for instruction
756 purposes. That is the way the matter stands.

They paid me a consideration for the license agreement. Then the Vanitas Company assigned the Hosiery Motor-Mend Corporation, and we consented to that. Then the Hosiery Motor-Mend Corporation assigned our license to the other people, but I am not sure we consented to that. Our original license agreement permitted them to assign it to anybody to take over the business, so I don't know whether I consented to that in writing, but if Mr. Stancliffe says we did, undoubtedly we did.

I don't think we ever received anything from the Vanitas Company for the needles, because we consented at the time of this needle to the assignment to the Hosiery Motor-Mend and this agreement provided for any needles we furnished them, they were to pay us a certain amount per needle. I think it was originally $2.00 or two and a half, per needle. That was not a monthly rental but a flat rate for the needle. They did pay us for the rights to use needles in the machine. They only paid us for making up the needles. They had the right to use them and they had the right to make them if we 758 failed to furnish them the needles ourselves.

We did receive from the Hosiery Motor-Mend Corporation certain amounts of money for the furnishing of needles to them, and we afterwards received certain amounts of money for furnishing needles to the Kayser Hosiery Motor-Mend Corporation, prior to this decision of the case in Washington; that is my recollection.

(Adjourned to March 25th, 1931; 10:30 A. M.)

759

NOAH A. STANCLIFFE (Recalled).

DIRECT EXAMINATION BY MR. GILLIGAN (Continued):

I have checked up the date of the consent by Finch Corporation to the assignment of the Finch license to the Kayser Hosiery Motor-Mend and found that the original was dated May 14, 1929. Also I have here the original contracts between Gimbel Brothers, Inc., of New York, and the

760 *Noah A. Stancliffe. Recalled. Direct,*

Vanitas Company, dated March 31, 1928. That is apparently amended by agreement between the Vanitas Company, Inc., and Gimbel Brothers, Inc., dated day of June, 1928. I gather from the date of the acknowledgments that the proper date is about June 25, 1928. There was a further agreement dated March 15, 1929, between Hosiery Motor-Mend Corporation and Gimbel Brothers, Inc. The Gimbel franchise or license agreement is still in force and effect, having been taken over as one of the assets of the Hosiery Motor-Mend from that
761 company to the Kayser Hosiery Motor-Mend. It was my legal conception at the time of the transfer that the Hosiery Motor-Mend Corporation took over the Vanitas contract when it took over the Vanitas Company.

I also have here an original license or rental agreement between the Kayser Hosiery Motor-Mend Corporation and Colonial Hosiery Repair Company of 1579 Madison Avenue, New York City, dated May 29, 1929. That contract is still in force and effect.

On May 17, 1929, the Kayser Hosiery Motor-Mend Corporation took over the assets of the Hosiery Motor-Mend Corporation. Then on May 29,
762 1929, after the assets of Hosiery Motor-Mend had been taken over by Kayser Hosiery Motor-Mend Corporation, the Kayser made a contract with the Colonial Hosiery Repair Company, dated May 29, 1929. Hosiery Motor-Mend Corporation was organized in November, 1928.

Aubrey C. Dickson. Recalled. Direct. 763
Aubrey C. Dickson. Recalled. Cross.

AUBREY C. DICKSON (Recalled).

DIRECT EXAMINATION BY MR. GILLIGAN (Continued):

I saw the demonstration of the Vanitas System, to which I previously testified, demonstrated to me in the offices of the Kayser Hosiery Motor-Mend Corporation, at 40 East 34th St., New York City, on several occasions. From June, 1929 to June, 1930, I visited those offices at least half a dozen times. I believe each time I went there, I went 764
through with my friend, Mr. Block. He was then in charge of and Manager of the Kayser Hosiery Motor-Mend Corporation. I had known him for some years. We discussed all points very freely and he would show me through his shop almost every time I went over there. I saw the girls operating there. They were operating in exactly the same way that I described in my testimony.

CROSS EXAMINATION BY MR. STANCLIFFE:

The address was 40 East 34th St. Each time I was there Mr. Block was there. Mr. Manderlick 765
can verify my statement. He was there almost every time I was there.

They had a force of employees in that office. They had in the rear of that office a place for the girl operators to operate and up toward the front, they had a place for demonstration.

I could not testify about whether they had any bookkeepers there. In the suite of offices, Mr. Block's private office was in the front, as you came in the door. Then there was a sort of general office where the telephone operator was. Then there were

766 one or two glass enclosed offices around there. Then in the rear, up to the four windows where the operators sat and where the tables were, they did their refinishing and worked on their needles. That was the Kayser Hosiery Motor-Mend Corporation.

REDIRECT EXAMINATION BY MR. GILLIGAN:

Those were the same offices that had been formerly occupied by the Hosiery Motor-Mend Corporation.

767

FRANK A. LOSH (Recalled).

DIRECT EXAMINATION BY MR. GILLIGAN (Continued):

I was asked to file some information in regard to advertising costs and, in response to that request, I wired the Secretary of the Company, at the office in Washington, D. C. asking her to wire me the figures as taken from the books of the Company, which show these charges for the previous
768 years. Now, I have in response to that request, a wire from the Secretary of the company, with the information that the records show:

For the year 1925	$3.75
For the year 1926,	$150.00
For the year 1927,	$323.00
For the year 1928,	$1,055.80
For the year 1929,	$3,171.44
For the year 1930,	$700.20

The telegram was signed by the Secretary of the company.

CROSS EXAMINATION BY MR. WOOSTER (Continued):

I am quite sure those figures include the cost of printing of the decrees as we obtained them from the various Courts, and mailing them out. As a matter of fact, I do not remember of our ever having more than 1,000 copies of each decree printed. That is a small item for printing.

Those figures did not include salaries and expenses of people who visited the mills, because we did not pay salaries to any of our salesmen. They were all out on a commission basis. They got a 770
percentage of what business they turned in to us. I do not remember that we ever did what might be called missionary work. Included in the advertising is what is spent for the insertion of an advertising in the paper, and the printing of circulars.

I now do not think that the first decree, in the Stark case in Kansas City, was mailed by us to all the mills, as I had previously testified, because in printing that, we published a full page ad in the Textile World, which is a trade paper that goes to the mills, and we figured in that way they would get better knowledge of it than by sending them out. We may have sent some but not as many as 771
I told you.

As a matter of fact, the decrees published and mailed by us, were mailed primarily to our franchise holders for two reasons—first, to let them know that they were getting some value for the cash consideration they paid for the franchises and also to show that we were doing what we could to protect them in the exclusive rights they had purchased from us, but other than that, we did not send these out broadcast at all.

772 *Frank A. Losh. Recalled.. Cross.*

(File wrapper and contents of original Stephens patent offered as Plaintiff's Exhibit No. 33.)

(File wrapper and contents of Reissue patent offered as Plaintiff's Exhibit No. 34.)

It is stipulated by and between the respective parties to this cause that the record, including the testimony, as taken in open Court in the several cases in which this patent has heretofore been litigated may be considered by the Trial Court and in the Appellate Court in connection with the
773 argument, in order that respective courts may ascertain what were the facts before the several Courts upon which the decree was predicated, or for any other purpose that the respective courts may deem proper for examining the records, including any exhibits that may have been received in those cases.

Plaintiff rests.

Mr. Wooster: I offer the following depositions taken under the statute and rules and by special order of Hon. John C. Knox.

The Court: What dates?

Mr. Wooster: Taken April 23-26, 1930, be-
774 fore Joseph M. Kearney, Notary Public, at Milwaukee, Wisconsin, as follows:

Edward E. Busek,
J. C. Ruedt,
May Delebeck,
Mrs. Helen Luell,
Mrs. Margery Converse,

Vernon Kraft, the latter being the man who took motion pictures of Mrs. Converse reknitting a run, and who has certified to the positives filed as exhibits, as being the ones he actually took.

Notice of Taking Depositions. 775

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, INC., Plaintiff, against HOSIERY MOTOR-MEND CORPORATION, Defendant.	In Equity No. 48-16.

776

SIR:

PLEASE TAKE NOTICE that on Wednesday, April 23, 1930, at 10:30 o'clock A. M., the depositions of Marjorie Converse, Julius Reudt, Edward E. Busek and Gustav Weinholz, each residing at Milwaukee, Wisconsin, and Mrs. G. R. Rudy, now of Moline, Illinois, formerly Pauline Kraus, of Milwaukee, Wisconsin, and perhaps others, will be taken before I. C. Turner, a Notary Public in and for the County of Milwaukee, State of Wisconsin, or before some other Notary Public at that place, at my rooms at the Hotel Schroeder, Milwaukee, 777 Wisconsin.

That after the closing of the taking of these depositions at Milwaukee, Wisconsin, and at 10:00 o'clock A. M. on the following day, the deposition of Jerry H. Kelly, residing at Chicago, Illinois will be taken before Donald H. Sweet, a Notary Public in and for the County of Cooke, State of Illinois, or before some other Notary Public at that place, at Mr. Sweet's office, at 10 South LaSalle Street, Chicago, Illinois.

That two days after the closing of the taking of this deposition at Chicago, or in the event that

778 *Notice of Taking Depositions.*

this deposition is not taken at Chicago, then two days after the closing of the taking of testimony at Milwaukee, Wisconsin, the deposition of Ernest H. Fox, residing at Rockland, Tennessee, and perhaps others, will be taken on behalf of the defendant at my rooms at the Reed House, Chattanooga, Tennessee, before Robert C. H. Seynck, a Notary Public in and for the County of Hamilton, State of Tennessee, or before some other Notary Public at that place.

That in the event it is not possible for any reason
779 to take the deposition of the said Fox at this time and place, then, at 10:00 o'clock A. M. on the day following the closing of the taking of depositions at Chattanooga, Tennessee, the deposition of the said Fox will be taken before Mary E. Coleman, a Notary Public in and for the County of Roane and State of Tennessee at her office at Rockland, Tennessee, or before some other Notary Public at that place.

That by stipulation had between the parties this day, the depositions of E. G. Gearhardt and Irvin Miller of Clearfield, Pennsylvania, will be taken at that place on notice, prior to June 20, 1930, and
780 that thereafter, the taking of depositions of other witnesses on behalf of the defendant will be adjourned from time to time and from place to place, without further notice.

That the above named Notaries Public are not of counsel or attorney to either of the parties nor interested in this cause.

The examination of the witnesses will be taken under Sections 639, 640, 641 and 642 of Title 28 of the United States Code and the Equity Rules.

Attached hereto is a check for Five Hundred ($500.00) Dollars, in compliance with the pro-

vision of paragraph "FIFTH" of order to take depositions signed by Judge Knox, February 21, 1930.

WARREN S. ORTON,
Attorney for Defendant,

Dated, New York, April 16, 1930.

To:

DANIEL BURKE, ESQ.,
Attorney for Plaintiff,
72 Wall Street, New York City.

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DEPOSITIONS OF WITNESSES TAKEN ON BEHALF OF DEFENDANT

STATE OF WISCONSIN, }
MILWAUKEE COUNTY, } ss.:

Depositions of witnesses taken before JOSEPH M. CARNEY, a Notary Public in and for the County of Milwaukee, State of Wisconsin, at the Hotel Schroeder, Milwaukee, Wisconsin, on behalf of the defendant, pursuant to notice of April 16, 1930, and in compliance with "Order to Take Depositions" 783
signed by Hon. John C. Knox, United States District Court Judge, February 21, 1930, as modified by stipulation of February 22, 1930 between the parties, this 23rd day of April, 1930 beginning at 10:30 o'clock, A. M.

PRESENT:

For the Plaintiff: VERNON E. HODGES, ESQ. and HENRY GILLIGAN, ESQ.

FRANK C. STEPHENS in person.

For the Defendant: WARREN S. ORTON, ESQ.

784 *Deposition of Edward E. Busek. Direct.*

Deposition of EDWARD E. BUSEK, of the City and County of Milwaukee and State of Wisconsin, residing more than one hundred miles from the place where the trial of this action will occur, and being a witness mentioned in said order to take depositions and a witness called on behalf of the defendant herein, being duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, and being carefully examined, deposes and says, in answer to interrogatories propounded to him by Mr. Orton as follows:

785 My name is Edward E. Busek. I am fifty years of age, employed by the Phoenix Hosiery Company as superintendent in the seamless knitting department. My residence is 781—49th Street. I have been employed by the Phoenix Hosiery Company for twenty years. The Phoenix Hosiery Company is located at 114 Buffalo Street, Milwaukee, Wisconsin.

The Phoenix Hosiery Company has been engaged in the hosiery business since I have been employed by it. They manufacture all kinds of hosiery, that is, men's ladies', infants', and children's. They have been in the past in the knit goods business also 786 while I was with them. That was, I would say, about ten years ago. By "knit goods," I mean like mufflers and neckties and knit wearing apparel.

The seamless knitting department is the start of the knitting; the balance of the departments are finishing departments, and so forth; and they also manufacture full fashioned hosiery; that is the reason I say "seamless" because I am only working in the seamless end of it, not in the full fashioned end of it. There are other departments, such as full fashioned stocking knitting department.

Before going into the Phoenix Knitting Company, I was employed by the Black Cat Hosiery Company. I went with the Black Cat Hosiery Company in 1901, I think it was, about 1901, and I stayed nine years, until 1910. The Black Cat Hosiery Company was also in the hosiery business—manufacturing hosiery, ladies', men's, infants, and children's.

I was assistant foreman while employed by the Black Cat Hosiery Company. My duties as assistant foreman were overseeing the knitting room, overseeing the manufacture of the hosiery—seamless hosiery, mainly. 788 While at the Black Cat Hosiery Company, I had an opportunity to familiarize myself with the machines and methods used in producing seamless hosiery. I am familiar with the machines and methods used during the last 29 years in knitting hosiery. I learned it at the time when I started with the Allen A—with the Black Cat Hosiery Company. They have changed their name now; they are "Allen A" today. They were the "Black Cat" at the time I worked for them.

The Black Cat at that time had what they called the Mayo machine for knitting hosiery. It was 789 similar somewhat to machines used today, only not as complicated, and not as efficient as these modern machines are now. By "modern machines," I am referring to the latest type, I would say, where you say knit fancy hosiery, and all kinds of designs in the hosiery which you could not do in those machines in them days. I refer to circular knitting machines now.

Prior to 1921, the Phoenix Hosiery Company had machines practically as we have today. They did not have all the attachments on like they have in

the machines today. By the machines today, I mean, say, the Scott-Williams machine, the Hemphill machine or the Banner machine manufactured by the Hemphill Machine Company.

Those are the two principal machines that we had, the seamless hosiery knitting machines. The Phoenix Hosiery Company, however, today have other types of machines for knitting stockings. The Standard machine is another type, and then we have imported machines. The Standard machines make hose similar to the Scott-Williams and Ban-
791 ner machines, only different designs you can make on some of them; they are practically the same, just a very slight different construction. I am still referring to circular knitting machines. In addition to the circular knitting machines, the Phoenix Hosiery Company also makes stockings on full fashioned machines, different types of full fashioned machines.

The circular knitting machine has a definite amount of needles which covers the stocking; for instance, we will say that you had 240 needles in a stocking, that same amount of needles would be in the hem or the ankle and all through the hose.
792 Those needles are arranged vertically in the cylinder and travel up and down, and take the yarn from skein, and knit these stitches, and the cams come along and operate them. The needles are arranged in a circle or cylinder, the same as you see here (indicating).

The full fashioned machines are flat. The needles are just as if you had them laying before you in this manner (illustrating). They are standing vertically but the sinkers are laying flat and they are all in a row, straight, maybe 340 needles in a row, on bars. I will say they start in with 340 needles,

and gradually narrow down to about 220 needles; that is what they call the fashioning of the hose, so that the ankle on the fashioned hose, we will say, just 220 needles, where the hemmed part, the larger part of the hose, is 340 needles or 360. It can be arranged accordingly.

My work with the Phoenix Hosiery Company has to do primarily with the seamless knitting machines. While I was with the Black Cat Hosiery Company, and prior to 1910, I made repairs on these seamless stocking machines. That was my chief work at that time, part of the main work. 794
During that time, I observed the operation of such machines. I undertsand how such machines operate.

I think I can show a picture of such seamless knitting machines as I observed them prior to 1910 in that catalogue. I would like to show that that way better; it is hard to describe this thing.

Q49. I hand you page 164 of the March. 1930, issue of "The Underwear and Hosiery Review," and ask you if the machine illustrated on the lower lefthand part of this page is one showing the circular knitting machine to which you have just referred? A. Yes, sir; that is just the same kind of machine that we are using. 795

The machine is constructed of various parts, such as gears and cams and a cylinder, latch-ring, and fingers feeding the yarn into the needles. The whole thing is pulled with a belt or motor, any way you wish to arrange it; all that is necessary when the machine is set up is to start it up, and it will make a complete stocking automatically. There are different types we make, for instance, the whole, complete stocking, or the men's hosiery, and the finer grades of hosiery, the top is transferred into

the machine and the foot is knit onto the top with this machine, the Hemphill Banner machine; this is just a picture; it does not necessarily mean it is the same kind of a machine.

I am marking the cylinder that has needles in it, with an arrow. I will mark it "Cy"; that would be the cylinder. I will mark another part here which is the latch-ring, "L. R." In order to transfer, the stocking into the machine, the latch-ring must be raised up, and a transfer is used to transfer the top onto the needles, such as I have here. When that
797 transfer is made, the latch-ring is lowered. This, at the same time, enters the yarn into the needles, and then you start the machine up and finish your hose.

When you start the machine, it is automatic, so far as knitting the hose is concerned, but it is necessary to transfer this top into it and start it up; that part is not automatic; you have to start the machine. After the machine is started and the belt is starting to revolve around, then it is automatic. You can also make hosiery on the machine completely automatic, without transferring the top. That is what we call string work. That makes one
798 stocking after another all the way through as long as you want to run the machine, and it is merely cutting them off one after another.

The top is made on another machine called the ribber. The ribber is a machine that makes the top part of a man's hosiery, we will say. This fabric is more elastic than the fabric made on the machine previously described. The difference between the machines is that you can make ribbed tops on that machine only. The ribber is a more simple machine in a way. It has a cylinder and a dial, and it has two sets of needles, a dial needle and a cylinder

needle; one is vertical and the other is horizontal. One works up and down, and the other works in and out.

This machine for making the ribbed top is similar to the machine which I have just been describing, except that there is a difference in the arrangement of the needles. The difference is that the cylinder of the rib machine at all times travels one way only, whereas the cylinder on the footing machine previously described can make a heel and toe oscillate forward and backward, which the ribber does not do. That is one difference. Another 800
difference is, it knits an entirely different fabric. It knits what we call a rib fabric. The ribber knits the rib fabric; and the other machines knit a plain fabric. The machine described on page 164 knits the plain fabric.

This is similar to the type of machine in use prior to 1910. This is the exact form, in so far as knitting patterns, and so forth. The older type of machines would only make plain fabric; but the construction of it was identically the same.

The cylinder is part of one such circular knitting machine.

801

(Page 164 of the March, 1930, issue of the Underwear and Hosiery Review, Banner circular machine, offered in evidence as Defendant's Exhibit 1).

The part marked "cylinder", "Cy." on the drawing, Exhibit 1, is the part here produced. The transfer is not on the drawing. The transfer is the part where the rib is fastened on stitch by stitch. I now produce this transfer.

802 These needles work up and down, and at the same time the yarn feeds into it, and they keep making stitches; they keep going up and down this way (illustrating). In going up and down, they form stitches. A stitch is the same thing as mother used to make when she made a stocking, I will say. I mean by a stitch, loops formed into fabric. And the fabric is made up of these loops. There is nothing else in the fabric except loops and stitches. That is all, loops formed with the yarn.

We place the ribbed top onto this transfer. We
803 get the ribbed top from the ribbing machine.

This is a brass ring, with a series of slots, and each slot contains what we call a point. This point has a groove, and the transfer needles fit into those grooves. There is one groove for each needle on that circular knitting machine. In mounting the fabric in position in such ring, it is put on stitch by stitch in a straight line. Each stitch adjoins the one next to it. If any one stitch is missed it will cause a drop stitch. The stitches are not exactly in a straight line, but in a circular line. They are arranged in a circle.

After the fabric is positioned on the transfer, we
804 transfer it onto the needles. That is done by placing the transfer ring on the needles so that each needle fits in a groove on these points just as I am doing here. (Witness demonstrating.) The position of the parts as they now exist is the needles are in the grooves of the transfer, or the transfer is placed over the needles—grooves on the inside. The fabric is on the transfer; it has not been transferred to the needles. In the normal operation of this machine, I push the fabric from the transfer onto the needles, just by merely pushing it off the points with your hand, or pulling the top down

over the needles. The ribbed fabric is on the knitting needles. Now you place down a latch-ring which feeds the yarn onto the needles and starts the machine.

By "latch-ring", I refer to the part marked "L. R." That fits over the needles, to sort of protect them, and there is a mouthpiece connected with that where the yarn goes through into the needle. Then we start up the machine. It immediately begins to form loops, to finish the hosiery. This knitting is effected by the cams pulling the needles up and down and forming loops. During this time 806
the cylinder needles are revolving around in a circle; they keep forming stitches until the whole hose is completed. After the hose has been completed, it automatically stops the machine, and the hose drops out, ready for inspection, or filing away—whatever you want to do with them.

This is not always the manner in which all seamless stockings are formed. It all depends on what class of stocking you want to make. This here merely describes a hose made with a ribbed top. You can have hemmed tops on them, which the same machine makes, just on a continuation of the fabric, and when it is finished it is folded up and sewed, 807
which makes a hem top. The operation is the same as I have described, starting with the machine which I have in front of you.

In making this transfer, very frequently accidents happened. If the operator misses one of these grooves on the transfer and does not get it on exactly right, and transfers it without this needle being in the proper groove, it will make a drop stitch. A "drop stitch" is one loop that is not in its proper place. A drop stitch formed under these circum-

stances is something like a hole. It will look to the ordinary eye like a hole in the fabric.

I can form a drop stitch on the fabric as I now have it positioned in front of me. There is one right there (illustrating).

That stitch being off the needle, when any force is put onto it, or when the transfer is made onto the needles by pulling them down, this stitch will slide through the fabric and change the appearance of the fabric. As I am now looking at it, it looks like—in technical terms—I would say a drop
809 stitch. It looks like there is a sort of series of holes there or openings, where this stitch slipped through. I would say it resembles a run in the hosiery. I see an opening in the fabric for about an inch and a half down, where it is separated from the usual way of knitting. There are threads across this opening. They are arranged across the fabric, and they look like they are about a quarter of an inch long. It looks like an open webbing. They are parallel to each other and spaced apart.

Runs can be formed in any way. They can be made by cutting a hole into the fabric, or catching it somewhere, where one stitch would tear, or sev-
810 eral stitches would tear; it would all make the same kind of runs.

The kind of runs I described by transferring occurred in operating these circular knitting machines. These needles would become broken during the operation of the machine. That would also cause a run. If the needle breaks, it would also cause a run, or if the latch would break, it would break the needle—anything pertaining to the needle. If this would happen, in order to save this fabric, it would be necessary to latch this up while on the machine.

In latching up, we take a needle similar to the kind used that is in that machine, and form a stitch about the same way as the machine knits it. This is done by inserting the needle into the stitch, and pushing it through the fabric and making the loops until the stitch is dropped off the needle, the one farthest from the needle.

I am just starting to do that. I am latching this fabric now, forming stitches the same way as they are knit into fabric. With my left hand, I am holding the fabric firm, holding it away from the needles in order to stretch it. The stretched fabric 812
has a lateral position, what we call a lateral position, straight away from the needles. The ladder is straight away from the needle, in a flat position, horizontally. In my right hand, I am holding a latched needle. The needle is in my right hand between my finger—I am pushing it between my thumb and first finger.

Q148. What is the position of the needle with reference to the run?

Mr. Hodges: You have caught the side there.

A. What is that. 813

Mr. Hodges: You pulled one of the side threads in, didn't you?

A. Well, I may not be as adept as some expert—that is, as somebody that is continuously working at it.

I am not exactly an experienced mender of runs in hosiery. I went to see this work done. Previously when I saw this transfer, I transferred this on one that was already topped on, and I want to

814 *Deposition of Edward E. Busek. Direct.*

remove that first, and then how I can show how this is done. There are too many stitches on this cylinder now—stitches that do not belong on there.

By Mr. Orton: The witness is now removing the fabric which he previously inserted on the machine.

I just done that to show how it is done.

I have that same fabric in front of me that was placed on the needles with the transfer. I am re-
815 moving one of these stitches in order to show a drop stitch. I have now produced a drop stitch. This has exactly the same appearance as the drop stitch which I previously formed on that transferred fabric. Now you can see how it is done (illustrating). I am latching up this drop stitch, in order to fix up the fabric the same as it was before that drop stitch was made. With my left hand, I am holding the fabric away from the needle in sort of a stretched position. The stretched fabric is horizontal away from the needles, in a stretched position, which opens up these stitches. The needle which I hold in my right hand is in sort of a ver-
816 tical position with reference to the run which I am now latching.

Q158. Strictly in a vertical position?

Mr. Hodges: Objected to as leading.

(Testimony received subject to the objection.)

A. A little bit on a slant.

Mr. Orton:

Q159. On a slant to what?

Mr. Hodges: Objected to as leading.

(Testimony received subject to the objection.)

A. To the fabric.

By "on a slant", I mean sort of an angle away from the stitch. The hook end of the needle is through the fabric, in under. The latch is in an open position. The next movement of the needle is pulling up. As I pull up, the stitch closes the latch over the next thread in the hook and pulls this thread through the stitch before it. The needle is 818
on top of the fabric now, with the stitch just made in the hook. The hook end of the needle is above the fabric, and it has one stitch on it. The next operation is pushing it through the fabric. In pushing it through the fabric, the needle is moving downward. I move it down just sufficient to clear the latch, so as the stitch will clear the latch. The stitch is in the needle above the latch, when the latch is open. The latch is caused to open by the stitch pulling through, away from the hook which opened the latch. Then to complete the relooping of the run, I bring this needle back again with the thread ahead of it going into the hook, and the 819
latch going over it, closing up and forming another stitch. That is a continuous operation. The last formed loop is placed on the needle from which it previously escaped.

In the normal operation of this machine, you just continue the knitting the same as you have been, the same as if this never would have happened.

The appearance of the part which I have just relooped is the same as the fabric before it dropped the stitch.

820 *Deposition of Edward E. Busek. Direct.*

The looping needle with which I have just performed this operation is an ordinary knitting needle with a pivoted latch and a hook on the upper end as I am now holding it. The latch is the pivoted piece that works up and down. The purpose of the latch is for the loop to slide over it. The latch covers up the end of the hook, so that your fabric will stay in there, or your yarn will stay in there.

This method of relooping runs while the stocking was in the machine was used at the time I was with the Black Cat Hosiery Company; that is, as
821 far as I can remember, it was done, such operations as this. It was used by the Phoenix Hosiery Company prior to 1921, and it is used by the Phoenix Hosiery Company at the present time.

Mr. Orton: Defendant offers in evidence the cylinder of the seamless machine, with the knit fabric thereon just used by this witness, as Defendant's Exhibit 2.

Mr. Orton: Defendant offers in evidence transfer ring just used by this witness as Defendant's Exhibit 3.

Mr. Orton: Defendant offers in evidence the
822 relooping needle just used by the witness as Defendant's Exhibit 4.

I came with the Phoenix Hosiery Company in 1910 exactly. At that time, they had a repair department. The business of this department is inspecting and mending; in other words, you call it repairing of hosiery that has been damaged in the course of manufacture. Such damaged hosiery were holes in the stockings, drop stitches, anything pertaining to or which looked like the hose would not be perfect.

Those runs occurred in stockings after they were taken off the machine and before they were ready for sale. That might happen as they were going from one department, handled from one department to another, sometimes they might damage the hose; for instance, a looper may spoil something. If the looper spoiled it, there might be runs or holes in the stocking.

Q194. By "runs" do you refer to the same type of runs as you were illustrating this morning on the re-looping of runs on the circular knitting machine? A. It is the same kind of runs, only they would be in the plain fabric in place of the ribbed fabric. 824

I am now referring to seamless stockings.

I became acquainted with the methods used in the repair department at that time in relooping runs in finished stockings. I observed how the runs in stockings were relooped by the menders at that time. I have seen them mend up on the hosiery, latch it up. I have seen how they latched them and how they finished them off. All of the menders did not latch them the same way. The majority of them used the hand, with a needle, to latch up the stitches. They done that in different ways. They left that mostly to the operators themselves, as to which way they could do it the best. 825

I have in my right hand the same latch needle that I used for latching up the stockings in the cylinder, Defendant's Exhibit 4. In my left hand is a piece of hose. It has a drop stitch in it, with a series of threads across it. I am holding my left hand straight away from the body, with the fingers inside the fabric, stretching out the fabric, spreading it apart. It opens up the fabric, so it is more exactly seen where this drop stitch is. The palm

of the hand is beneath the run, with some of the fingers as they come under it. There is a space between the run and the hand, I would say, of about an inch. The hand is held flat with the fingers held in sort of an upward position, and the ends of the fingers are above the palm of the hand.

Q215. Can you position the needle, Exhibit 4, which you hold in your right hand, in the position in which you saw these menders hold it in 1910, and describe the position of your right hand, the needle, and the run? A. I place the needle into the stitch.

827 Q216. Describe the position of your hand. A. Then I am pulling the fabric apart, in order to let the stitch run back up to the needle.

Q217. I asked you to describe the position of your right hand. A. The right hand is holding the latch needle, inserted into the fabric in a horizontal manner.

Q218. And you have the needle where in your hand? A. Between my thumb and forefinger.

The needle is just pushed through the stitch, about half way in; I would say about an inch into the fabric. The rear end of the needle is in my hand, the back end of the needle, really. The rear end is just merely where we hold it, and it is about

828 2½ inches away from the hook end; that is merely sort of a guide, to use like a handle.

Q223. Is the rear end over the machine?

Mr. Hodges: Objected to as leading.

(Testimony received subject to the objection.)

A. Yes, sir, that is the only way it can be done.

Mr. Hodges: The answer is objected to.

A. The needle is right through the fabric.

MR. ORTON:

Q224. I am now positioning a flat sheet of paper parallel to, and on top of, a run; and, as you hold your needle at present, what is the relation of the needle to the sheet of paper?

Mr. Hodges: The question is objected to as leading, and showing the witness just how to answer the question.

(Testimony received subject to the objection.)

830

A. It is parallel to the fabric; the needle is parallel to the fabric now.

MR. ORTON:

Q225. I asked you what was its relation with reference to the sheet of paper.

Mr. Hodges: Same objection.

(Testimony taken subject to the objection.)

A. The same position as the sheet of paper.

MR. ORTON: 831

Q226. What do you mean by "the same position?" A. Up and down.

Q227. Is it parallel with the sheet of paper?

Mr. Hodges: Same objection.

(Testimony taken subject to the objection.)

A. Yes.

832 *Deposition of Edward E. Busek. Direct.*

MR. ORTON:

Q228. If it is parallel with the sheet of paper, how is it possible for me to hold the sheet of paper, and you still hold the needle—without interfering with the paper?

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

A. I cannot see the needle now the way you are holding it.

833 MR. ORTON:

Q229. Well, look at the needle. A. It is at an angle away from the paper.

Mr. Hodges: The answer is objected to.
(Testimony taken subject to the objection.)

MR. ORTON:

Q230. What is the relation of the needle with reference to the length of the run?

Mr. Hodges: Objected to.
(Testimony taken subject to the objection.)

834 A. It is inside of the stitch about an inch, I would say.

MR. ORTON:

Q231. Is the whole needle within the stitch?

Mr. Hodges: Objection repeated.
(Testimony taken subject to the objection.)

A. Half the needle, about.

Mr. Hodges: I will withdraw the objection.

MR. ORTON:

Q232. Where is the other half of the needle? A. In my hand, above the fabric.

Q233. What is the position of your hand with reference to the length of the run?

Mr. Hodges: Objection repeated.
(Testimony taken subject to the objection.)

A. In a vertical position. The needle is in a vertical position with the fabric.

836

MR. ORTON:

Q234. What do you mean "in a vertical position with reference to the fabric?"

Mr. Hodges: Objection repeated.
(Testimony taken subject to the objection.)

A. Going up and down through the fabric.

MR. ORTON:

Q235. By "vertical", do you mean that the needle is pointing toward the center of the earth? 837

Mr. Hodges: Objection repeated.
(Testimony taken subject to the objection.)

A. I mean that it is going up and down through the fabric.

MR. ORTON:

Q236. You do not mean that the whole needle is going up and down through the fabric?

838 *Deposition of Edward E. Busek. Direct.*

Mr. Hodges: Objection repeated.
(Testimony taken subject to the objection.)

A. No, just the hook part of the needle with the latch.

MR. ORTON:

Q237. Considering the stretched fabric, as you are now holding it, what is the direction of the movement of the needle as a whole, with reference to the stretched fabric? A. Going in and out of
839 the fabric. It does not matter whether you hold it up or down or sideways, as long as you push the needle in and out through this fabric.

Q238. What do you mean by "sideways?" A. I mean, holding it this way, or most any way, in order to make it most convenient for you to hold.

Q239. Then does it make any difference how the needle is held?

Mr. Hodges: Objected to as leading.
(Testimony taken subject to the objection.)

A. It is necessary to hold the needle firm in your
840 hand, so that you can push it through the stitches.

MR. ORTON:

Q. But you have not told me what you mean by "sideways."

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

A. Well, pushing this needle through the fabric straight up and down.

MR. ORTON:

Q240. If it is straight up and down, how can it be "sideways."

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

A. Well, if I hold my hand sideways, it will go in and out just the same, whether I hold it facing it, or facing sideways. If I face it sideways, I am pushing it sideways.

842

MR. ORTON:

Q241. Position the fabric in the position which you meant when you said that you were facing upward?. A. All right. (Witness demonstrates.)

Q242. Now, what is the position of the needle with reference to the vertical?

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

A. Straight up; more of an angle, I would say.

MR. ORTON:

843

Q243. How much of an angle?

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

A. Oh, about 40 degrees.

MR. ORTON:

Q244. 40 degrees to what? A. To be straight up and down.

844 *Deposition of Edward E. Busek. Direct.*

Q245. And the fabric is stretched going in what position? A. Across the palm of the hand.

Q246. With reference to the vertical, how was it stretched?

Mr. Hodges: Same objection.

(Testimony taken subject to the objection.)

MR. ORTON:

Q247. Please keep it in the position in which I asked you to keep it—straight up, I think you
845 said. A. Flat, yes, sir.

Mr. Hodges: Before he answers I want to put a statement on the record. I observe the witness is moving the fabric and the needle in various different positions in answering these questions.

A. Do you want me to answer that?

MR. ORTON:

Q248. I will now ask you to hold your hand steady in a set position, and, in that position where
846 you said it was straight up; and, when in that position, please describe the position in which you are holding the needle.

Mr. Hodges: Same objection.

(Testimony taken subject to the objection.)

A. I am holding it at an angle away from the fabric, at an angle in the fabric.

MR. ORTON:

Q249. I want you to keep that flat.

Mr. Hodges: I object to that.
(Testimony taken subject to the objection.)

A. It gets tiresome to do that, that is all.

Mr. Orton: I am simply endeavoring to insist that the witness hold the fabric in a fixed position, so as to avoid any objection that he is changing his position during the course of 848
this questioning.

A. Anyone doing this kind of operation will not hold their hand in any fixed position at all times; what I mean, particularly flat or sideways; because it is not necessary to do that.

Q250. And these menders which you observed in 1910 held their hands in various positions? A. They would hold them in positions convenient to them.

Q251. Did they ever hold them in the flat, upward position which you have just described? A. Yes.

849

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

A. Yes, sir, held it this way, or held it flat, or held it sideways; it would not make any difference; the operation at work is the same.

MR. ORTON:

Q252. Wherein does the needle which you now hold in your hand, being Exhibit 4, resemble, or

differ from, the needles used by the menders in 1910, in performing the operation which you have just described? A. The only difference is, they have finer work or finer material, and also some of them have a handle on their needle, in place of having the crude needle, as I use it. This can easily be arranged by cutting off one end of it and putting a wooden handle on it. That is the only difference there was.

Q253. Wherein did these needles differ, or resemble, the needles which are used on the circular
851 knit sewing machines, such as the cylinder, Defendant's Exhibit 2? A. They are practically the same kind of a needle.

Q254. Was there any other distinction between these needles, except the positioning of them in the handle, as you have described?

Mr. Hodges: Objected to as leading.
(Testimony taken subject to the objection.)

A. They use the same needle, only that they worked that with the hand.

In addition to the method which I have just described, there have been experiments done for the
852 other kinds of methods, for instance, using a hoop, or using a glass, or using a tube. I saw the menders at that time use a hoop, a glass, and a tube. A hoop is two rings, where the fabric is placed above one ring, and another ring slightly larger put over, in order to fasten this fabric. These hoops were mainly of wood. I do not know of any other material that they were made of. At the time we used them, they were of wood, the size of these hoops depended a good deal on the size of the fabric you wanted to use; generally, I would say, about four

inches in diameter. I can produce a hoop of the character such as I have just described; it is a hoop like this; a hoop of this type was used. The hoops that I saw used in 1910 by these menders did not differ in any way from the hoop which I have just produced, excepting the size. They were different sizes. I think they used them a little shorter than this. But of the same character of hoop.

Mr. Orton: Defendant offers in evidence the hoop identified by the witness as Defendant's Exhibit 5.

854

The cups used were any kind of a glass, like a drinking glass or water glass; anything shaped like a cup. The tube used was a brass tube about three inches in diameter, and with a slot in it so that when the fabric is pulled over, the run will come directly over that slot. It didn't make any difference how long you made the tube. The tubes that I saw in 1910 were about 8 or 10 inches long. I can produce a tube such as I say was used by the menders in 1910. I have such a tube. This tube correctly represents the tubes which I saw used by the menders in 1910.

The menders placed the material over the em- 855
broidery hoop, similar as placing it over the hand, in order to hold it in that stretched position. Now I am placing the smaller hoop inside of the fabric, and the larger hoop on the outside of the fabric. That holds the fabric in position so that it will be easier to latch. The run is on top of—between the two hoops. The condition of the portion of the fabric which contains the run is in a stretched position. In performing the relooping operation, the menders held the hoop in their hand—either right

or left hand, whether it was a right or a left handed person. The balance of the fabric not held by the two hoops was just hanging away from the hoop.

The menders took this same latch needle, the one I used when I was looping in my hand, Defendant's Exhibit 4, and looped it up. They held this Exhibit 4 in their right hand between the thumb and first finger. Poising the needle in the position in which they poised the needle at the start of the operation, I hold it in a vertical position with reference to the stretched fabric. I am holding the
857 stretched fabric in my left hand, in a flat position before me. It is not flat up against the body; it is in a horizontal position.

Poising the needle at the start of the operation, the needle is in almost the same position as my body, in a sort of vertical position, on a slight angle.

Where the stocking was fastened in the embroidery hoop, the run was repaired exactly the same way as I showed it when I had it over my hand. Repeating the operation with the fabric stretched on the embroidery hoop as I am now holding it, I am putting the needle through the stitch and pushing it up and down in the fabric, to form loops.
858 When I push it down, the hook of the needle goes through the stitch, and opens the latch. It goes down about half an inch, or three-quarters of an inch, somewheres like that; then you pull it back again, and the stitch closes the latch over the hook, forming another stitch. You get this other stitch from the yarn stretched across before. Number 1 is the original stitch, we will say. We put the hook of the needle through number 1; then push the needle through this stitch, number 1 which opens the latch, and slides over the latch; and then

they pull it back, and number 1 goes behind the latch, closes the latch and takes the yarn ahead of it, which is number 2, in the hook. By that time, the latch is just closing. The stitch number 1 closes the latch. Then they pull this yarn through it, which forms another stitch. (Witness demonstrating.) That is the third stitch; and then you repeat the operation.

After the menders got to the last stitch, when all these stitches were completed, they were mended up, fastened with another thread. They have a sewing needle to do that, with a thread similar to 860
the one that is in the fabric. That completes the whole thing. There is nothing more to be done, and the stocking is then repaired.

The menders in 1910 who used a cup did the same thing, just merely, instead of placing it on the hoop —which made it more complicated to handle for them probably—they used a glass, and put the fabric over the glass. With the glass, it could be held more firmly. This, I will say, is mostly for experimental work. It has been done in experimental ways. They had these cups setting by their place. They were not used for anything else.

When repairing runs in hosiery in 1910, they held these cups on the table, or set them onto a 861
table, and placed the fabric over them, over the opening on top. All of the stocking was outside of the glass. Just one layer of fabric was on top of the glass. The fabric was opened large enough so as to put the glass inside of it, inside of the stocking. On fashioned hosiery, where it was open; they would be mounted without the—that is, the fabric would be put over it; that is a full fashioned stocking, before it was finished, if it was mounted, it would be put over the glass. Of course, it would not have to be put inside.

862 *Deposition of Edward E. Busek. Direct.*

Mr. Orton: I introduce in evidence Defendant's Exhibit 6.

The menders who used the brass tube in 1910 in repairing runs in hosiery did the same thing. They placed the fabric over the tube, similar to what it was placed over the hand, bringing the run directly over the slot cut in the tube. Now, they generally had a small wooden block formed similar to what this tube is made, so that they could lay it in there and hold it in position, sort of cradle or
863 saddle, sort of a box to fit in, a support. Then they did the same operation as they did with the rest of them. The only advantage they had in doing this was you could pull the fabric towards you as you went along and done the repairing. It was more handy when you had a very long repair to make, because you could keep on continuously mending this thing, and keep on pulling it up.

MR. ORTON:

Q317. I will ask you to take off a few loops so that we may see just what they did in 1910.

864 (Witness demonstrates.)

Q. (Continuing.) Where is your left hand at present? A. The left hand is holding the fabric in the tube, in a stretched position. Of course, I cannot exactly describe how they done this; that is, I mean with regard to holding the exact position that they held their hands at; but I can show you the same way that this operation was done.

They held the tube with their left hand, if right handed, or with the right hand, if left handed. They

had to have one hand for the needle, and one hand for the fabric.

At present, I am looping up the stitches (witness demonstrates), in just the same way it was latched in 1910 by these menders. My right hand is more on one side, as I am holding it at present. The run is in line with the slot going into the tube, directly above it. The slot is on top of the tube, cut lengthwise. This operation is the same as the operation that I described in connection with the fabric when mounted on the hoop, identically the same movements. And with reference to the method when the fabric was stretched over a cup, the 866 method was the same.

Q328. Except for the fact that in one case the stocking to be re-looped was held stretched in the machine, and in the other case it was held stretched by either the hoops, the cup, or the brass tube, how did the method of re-looping otherwise differ, if at all, from the operation which you have described in connection with the re-looping in the machine, Defendant's Exhibit 2? A. I do not know where it would differ.

Q329. Did they differ at all? A. I do not know. No. It seems to me they were all the same. It was always necessary at all times to put your latch 867 needle through the stitch, and form the loops the same way.

It was always necessary to hold the fabric stretched by some means. You had to hold it in some position near to where you wanted to work. I cannot say exactly how long this method was practiced in which the embroidery hoops were used to expose the run. I would say a few months. The cups and the hoops were practically used at the same time. When the girls found it more conve-

nient to use the cup, they would use a cup, because it is practically the same thing, excepting to hold the fabric with the hand stretched on there. I would say, the method in which the brass tube, such as Defendant's Exhibit 6, was used, was practiced several months; that is as long as I know.

None of these hoops or cups or brass tubes are used at present by the menders of the Phoenix Hosiery Company; we do not use them.

After adjournment.

869 There were other methods used by the menders of the Phoenix Hosiery Company prior to 1921, except the methods to which I have previously testified. I will have to use this needle here, Defendant's Exhibit 4. In my left hand, I have a stocking, a piece of knitted fabric. The way they hold it now, I cannot quite do it, but it is somewhat similar. The way they do it, prior to 1921, they caught a loop after something that same way, and it seems to me they caught the needle over the top of the stitches, the same way they do it now. I don't think I can do it the way they did it. They latched up the stitch. It comes out the same way as the
870 way I have been latching up before, but they did not quite punch through like we do; they seemed to get the needle turned into the stitch from the top, holding it over the finger; that is the idea. It seems to me they stretched the fabric over the finger. The fabric is in engagement with the finger; held it with the finger or the hand, I don't know which. They got their hand in it in this manner, as near as I can show it (witness illustrating). They got the latch in there and started to loop and catch the stitches the same way. I am not particularly

familiar with this method, only what I saw them do it. I am not particularly familiar with this method as I saw them do it prior to 1921. That is true.

Q350. I will ask you to take the brass tube, Defendant's Exhibit 6, and the re-looping needle, Defendant's Exhibit 4, and take the piece of fabric on which you have been demonstrating, and stretch the fabric over the brass tube, with the run in the fabric positioned over the slot, in the same manner as you have testified this morning when explaining how the menders used this brass tube in about 1910. You then take the re-looping needle in your right hand, and insert the hook end through one of the loops formed in the run or raveling. Continue this movement on through the fabric, and while holding the needle laterally out of alignment with the run. Continue this movement until the loop has slid back over the end of the latch and beneath the latter. Now reverse the movement on the device through the loop, catching the next forward thread in the hook, and at the same time, cause the loop to close that latch over the thread, and permit the loop to be cast off over the end of the needle. Now cause the thread caught in the hook to form a new loop to take the place of the first loop. Now reinsert the device into the fabric as before, and repeat the operation until the run or raveling has been repaired. Now fasten the thread. A. I will have to have a needle. 872 873

I have in my hand an ordinary sewing needle and thread. The thread is threaded through the needle.

Q354. Now fasten the last loop which you formed on the re-looped fabric. A. It is rather a crude way, but it gets fastened. (Witness illustrates.)

Q355. Have you done now exactly what I told you to do? A. I have.

874 *Deposition of Edward E. Busek. Direct.*

Q356. Having done this, please point out any step, or steps, which was different from what was done by the menders in 1910 when re-looping on such brass tube as you have testified. A. There is no difference.

Q357. It is the same thing. A. Yes, sir.

Mr. Hodges: The answer is objected to as a conclusion of law.

(Testimony taken subject to the objection.)

875 Mr. Orton:

Q358. Is this method which I have just directed you to perform on the brass tube the same, or is it different from the method practiced by the menders in 1910 on the hollow cups?. A. It is the same.

Except they used a cup, but everything is the same, even to the fastening of the stitch. The operation is the same.

Q361. In what respect does this method which I have just directed you to perform resemble, or differ from, the method of re-looping runs which you testified was practiced on the circular machines for the past 20 or 30 years? A. The looping part is
876 the same, but the fastening is not the same.

When we have it on a machine, we put it right directly on the needle, and continue our knitting. In all other respects the method is the same.

Q364. Will you compare the method which I have just directed you to perform with the methods of re-looping runs in hosiery in 1910, and tell me in what respects they either resemble, or differ from, each other? A. Well, there is no difference as far as the points concerned, except what I showed you, the way they did it like we do it today,

with the needle going through on the top; that is the only difference we would have besides this.

Q365. What do you mean "besides this?" A. Besides the way I showed they did it here.

Q366. And you are referirng to which method in your last answer? A. The looping over the tube or over the hand or punching through the fabric.

Q367. Then I will ask you specifically to compare the method which I have just directed you to perform and the method which you have described in connection with the use in 1910, where the stocking was stretched over a cylinder, and tell me 878
wherein these methods either resemble, or differ from, each other. A. Only on latching, looping up the run, they done it over the finger, over holding it over the finger and over the tube.

Q369. I will ask the notary to slowly repeat the question again.

(Question again read.)

A. That is the same.

Mr. Orton: We will now adjourn to the Photoart House, 220 Wells Street, Milwaukee, Wisconsin, for the purpose of taking motion pic- 879
tures showings of certain methods of repairing runs in hosiery. We will adjourn to the motion picture studio.

Mr. Hodges: We object to the taking of motion pictures, as secondary evidence, and as not the best evidence, since it would be possible to have the witness in court, and where no excuse has been given for not having him there; and furthermore, because of the fact that moving pictures are not the witness' and afford no evi-

dence as to whether the pictures are of some person who has learned the art at a recent date, and afford no means of determining the many facts necessary to the proof of this case.

Mr. Orton: This objection is regarded as being premature, as, at this time, no motion pictures have been taken, and there is no evidence as to what defendant proposes to do with these pictures. We will adjourn.

Mr. Gilligan: Further objected to because the motion for the taking of depositions con-
881 tained no request for the taking of moving pictures, nor was any such requests granted in the order signed by the court.

Mr. Orton: The order did not direct that the depositions be taken in any particular way, and defendant contends that he may use any instrumentality for presenting the evidence to the court at the trial of this cause. All right, we will adjourn.

Mr. Gilligan: The notice for the taking of the depositions contained nothing concerning moving pictures, nor the place where such moving pictures would be taken, or the party by whom they would be taken, or the witnesses
882 taken.

Mr. Orton: All right. We will adjourn.

Mr. Gilligan: Under the circumstances set forth in the objections by attorneys for the plaintiff, we give notice that at the trial of the case we will move that those moving pictures be not received in evidence, and that we are attending the taking of the moving pictures under objection.

(Thereupon the Commissioner, the witness, and the parties hereto, adjourned to the moving picture studio of the Photoart Company,

number 220 Wells Street, Milwaukee, Wisconsin, where the following proceedings were had and testimony taken.)

EDWARD E. BUSEK resumed the stand for further direct examination by Mr. Orton and testified as follows:

I am now posed before a motion picture camera. I have in front of me a cylinder (Defendant's Exhibit 2) with a sock on it and several stitches 884
raveled down forming a run. In my right hand, I hold a needle, Defendant's Exhibit 4. I am about to latch up the stitches.

Q377. And in doing this, are you repeating the process of relatching stitches as you described it this morning in connection with your demonstration on this machine Defendant's Exhibit 2? A. Yes, sir.

Mr. Hodges: Objected to as leading.

(Testimony taken subject to the objection.)

I am about to latch up the stitches. I first saw 885
this operation performed which I am about to do, as far back as 1902.

Q380. Proceed.

(The witness here gave a demonstration of the method referred to before the motion picture camera.)

I have now assumed a different position in front of the camera. I am sitting sideways to the camera, showing the operation.

886 *Deposition of Edward E. Busek. Direct.*

Q383. Now kindly repeat the operation in this position.

(The witness here repeated the operation before the motion picture camera.)

Mr. Orton: The motion picture operator is directed to label the parts thus taken "Busek demonstration on circular knit machine," and is directed to forward the original film, properly identified, to Joseph M. Carney, the notary taking these depositions, 517 Wells Building,
887 Milwaukee, Wisconsin.

(It is stipulated between the parties hereto, by their respective counsel, that, in place of C. T. Turner, Joseph M. Carney, a Notary Public in and for the County of Milwaukee and State of Wisconsin, will act in his place and stead as special commissioner, and is to be the custodian of all the exhibits until they are forwarded by him to the Clerk of the United States District Court for the Southern District of New York, or as may be hereafter otherwise provided.)

(At this point the witness was sworn by Joseph M. Carney as Notary Public and Spe-
888 cial Commissioner.)

Now, I am posed before the motion picture camera for a second demonstration. I now have before me, a brass tube, Defendant's Exhibit 6, with the fabric placed on it, to loop up. In my right hand, I have a latch needle, Defendant's Exhibit 4. I am going to latch up a series of stitches here.

Q388. Are you going to perform, now, the method which you say was used by the menders in the Phoenix Company about 1910? A. Yes, sir, at times.

Q389. At times? A. That is, used at times; it was not used there continuously.

Q390. Well, was it used in 1910? A. Yes, sir, it was used in 1910.

Q391. Proceed. A. (The witness here demonstrates before the motion picture camera.)

I am now posed in a different position relative to the camera. I am directly in front of the camera.

Q394. Proceed.

(The witness here demonstrates before the motion picture camera.) 890

I am now in a different position. The camera is going to take a view of myself with the cylinder.

Q397. Suppose you just start the operation.

(The witness here again demonstrates before the motion picture camera.)

Q398. Mr. Busek, comparing the speed with which you did the re-looping in this demonstration before the motion picture camera, was it faster or slower than the operation which you say was performed by the knitters in the Phoenix Hosiery 891 Company about 1910? A. Faster.

Q399. Which was faster? A. The operation by the knitters.

Q400. Why would it be faster in that case? A. Because they would be more experienced than I am.

Mr. Orton: Directions to the motion picture operator; You will please prepare a title for the latter portion of this film entitled "Busek demonstration on brass tube, Defendant's Exhibit 6."

892 *Deposition of Edward E. Busek. Direct.*

The Notary is directed to mark the positive, "Defendant's Exhibit 7."

We will now adjourn back to the Schroeder Hotel.

Mr. Hodges: I want to put an observation in there to the effect that, as observed by counsel for the plaintiff, the goods operated upon was exceedingly coarse ribbed.

Mr. Orton: Pardon me. I will introduce that in evidence, Mr. Hodges.

893 Mr. Hodges: Yes; and all operations were in the work of restoring a rib and not a channel between ribs.

Mr. Orton: Defendant offers in evidence the fabric used by the witness in making this demonstration, and asks that it be marked Defendant's Exhibit 8.

(Said fabric was so marked by the Notary, "Defendant's Exhibit 8.")

Mr. Orton: We will adjourn to the Schroeder Hotel.

(Thereupon the Commissioner, the witness and the parties hereto, adjourned, to reconvene at the Schroeder Hotel.)

894 After adjournment.

I used a coarse ribbed knitted fabric in the demonstrations today because it is easier to handle, for one thing, for myself, than it is for the finer fabric, to see the stitches. I can see the stitches on the coarser fabric and that is the reason for using it. There was no difference in the operations which I have been describing today, in so far as the character of the fabric is concerned. I would have done the same thing on a finer knit fabric.

The reason why I restored loops which formed a rib in the demonstrations before the motion picture camera was that on placing the fabric on a cylinder, you always use a rib. That is the reason for showing these stitches, how it is done on the cylinder, and you use a ribbed fabric. I could have performed the same operation if I were restoring the loops which form the channel between the ribs. The operation was the same; and the operation was the same with the knitters in 1910.

In 1910, the general character of the fabric which was used in making hosiery was more in the coarse line, similar to this kind of fabric, Defendant's Exhibit 8, not quite as coarse as that, but somewhat similar. In recent years the character of fabric is much finer; it is the same material but finer. 896

The material used in Defendant's Exhibit 8 is cotton yarn. Stockings made in recent years are made out of all kinds of material. This is rayon, worsted, mercerized. These materials were used as far back as 1921. The material used mostly at the present time, particularly in the manufacture of ladies' hosiery is silk. Men's socks are also made of silk; the higher priced ones are mostly of silk, and the other priced ones are made of mercerized, or cotton. These operations which I have been describing, as practiced by the menders in 1910, were on stockings made of all these different materials. 897

I went to Philadelphia, Pennsylvania, recently to appear as a witness for the defendant in the case of the Stelos Company, Inc. vs. Runner Needle, Inc., at that time pending in the District Court of the United States for the Eastern District of Pennsylvania.

Q424. What evidence were you to give in this case, if you know?

898 *Deposition of Edward E. Busek. Direct.*

Mr. Gilligan: I object to that. That has nothing to do with this case.

(Testimony taken subject to the objection.)

MR. ORTON:

Q425. Answer the question. A. Similar to this here.

Q426. By "similar to this here" you mean the testimony which you have given today? A. Yes, sir.

Q427. Was the brass cylinder Defendant's Exhibit 6, in Philadelphia at that time?

899

Mr. Gilligan: I object to that. Same objection.

(Testimony taken subject to the objection.)

A. Yes, sir.

I know Pauline Krause. I have forgotten her present name. At the time I knew her, she was employed at the Phoenix Hosiery Company, in various positions. She had charge of the mending and inspecting at one time, about 1912. I cannot say the exact number of years that she was with the Phoenix Hosiery Company as a mender and in-

900 spector. I would say several years.

Q434. Was she present at Philadelphia, Pennsylvania as a witness for the defendant in this case of the Stelos Company, Inc., vs. Runner Needle, Inc.?

Mr. Gilligan: Same objection.

(Testimony taken subject to the objection.)

A. Yes, sir.

MR. ORTON:

Q435. Were you ready and willing, in this Philadelphia case, to give the evidence that you have given today in this case?

Mr. Gilligan: Same objection.
(Testimony taken subject to the objection.)

A. Yes, sir.

MR. ORTON: 902

Q436. Were you called upon to testify in this case at Philadelphia? A. No.

Q437. Do you know why you were not called upon to give that testimony? A. No.

Mr. Gilligan: Let the same objection run all through this testimony; all of this in regard to Philadelphia is objected to.
(Testimony taken subject to the objection.)

MR. ORTON:

Q438. Did Pauline Krause give any testimony at that time in this case of Stelos Company vs. Runner Needle Company? A. I don't know. 903

Q439. Do you know whether there was a trial at that time? A. No, sir, there was no trial.

Q440. Will you tell us briefly just what happened in Philadelphia at this time?

Mr. Gilligan: Same objection.
(Testimony taken subject to the objection.)

904 *Deposition of Edward E. Busek. Cross.*

A. Well, we were called to the hotel, and met in a room the same as this, and we were asked some questions.

MR. ORTON:

Q441. Do you know who asked the questions? A. Mr. Hodges, didn't you ask questions there?

Q442. You tell. A. Mr. Hodges asked questions, yes, sir.

I am not connected in any way with the parties
905 to this suit, I have no interest whatever in the outcome of this suit.

CROSS EXAMINATION BY MR. HODGES:

XQ445. Are any of the officers or employees of the Phoenix Hosiery Company, by which you are employed, stockholders of, or interested in any way in, the Motormend Company or Vanitas Company, or Julius Kayser Hosiery Company, do you know?

Mr. Orton: Objection is taken by Mr. Orton
906 to this question, on the ground that this witness was not asked in his direct testimony with reference to the stockholders or officers of any of the companies mentioned in the question.

(Testimony taken subject to the objection.)

A. I do not know who the stockholders are, or anyone connected with them.

Herman Gardner is the president of our company. He has been president since I have been with them, that I know of.

XQ448. Do you know of the Berkshire Mills of Reading, Pa.?

Mr. Orton: Objected to on the ground that no reference was made in the direct testimony to this company.

(Testimony taken subject to the objection.)

MR. HODGES:

XQ. (Continuing) And is that one of the large concerns of the country in the hosiery business? A. I think it is. 908

It was a common practice for all the mills to restore runs in the seamless hosiery in the machines where they occurred before the fabric was removed from the machine, so far as I know. That would apply to the Berkshire Mills as well as any other, if it was seamless hosiery.

When I entered the employ of the Phoenix Hosiery Company in 1910, that company was manufacturing men's hosiery, the same as we are doing today, and children's, mostly men's hosiery. They later commenced the manufacture of women's hosiery, about the year 1910; I know they had started at that time. 909

The ladies' hosiery we would make on seamless machines. They would be made in a continuous string, without transfer; and some children's hosiery we made that way. Others were transferred. The difference in manufacture depends on the kind or style you are making.

They are now making full fashioned hosiery, and have been for about 18 years, I think. I am positive, 18 years. I know how full fashioned hosiery is made. The toes are fashioned, and so are the

910 *Deposition of Edward E. Busek. Cross.*

legs. They do the full fashioning on the legs; they start out with the wide in the hem, and they gradually narrow down to the ankle. They do that narrowing down by taking stitches from one and transferring them over to the next adjoining needle. That is not done by hand, taking the operation of the machine. The narrowing is not done in tubular form, in the round machine.

I have not had any practical experience in the manufacture of full fashioned hosiery, just through observation. I have, with the tubular hosiery. I
911 have actually operated these machines myself. I don't think there is any difference in the formation of the runs in the tubular and in the full fashioned blank; the loops are practically the same.

I have never attempted to restore the runs in full fashioned hosiery. I have seen it done. As near as I know, it has been done all the time, whenever there was a run occurred. I cannot say whether on the machine. I am not familiar enough with that.

I was not employed in the Phoenix mill to do the mending of hosiery. All of the testimony that I have given today has been the result of my ob-
912 servation, excepting on this cylinder in the knitting room. That is, the original cylinder on which the circular knitting was done. I have done knitting. I have done the repairing where it was necessary on that kind of machines. That is 25 years ago, at least, and up to the present time; I am still doing it. I am not fairly skillful in that work. I do not do the work myself. The operators do the work. I have not done it lately, within, say, a year, or several years, anyway. I do occasionally now, but as a regular thing, I stopped doing it,

probably 10 or 12 years. And I now do it whenever I want to show someone. That is perhaps once a month or once a year.

When the repairing is done in the machine, it is always done through the rib, that is to say, the portion that projects out toward you, rather than in the grooved part between two ribs. The needles that hold the hollow portions between the ribs do break and it comes off the hook between. Both sides are ribbed, but the repair is done that way. The reason of that is, when that lower rib would break, we would repair that before we put in 914
the cylinder; that is, after we take it out of the cylinder we would repair that the same as we would if the break was made after it is already in. We could do it while it was in the machine, but we do not, because it shows that rib in the wrong direction. In other words, it would reverse the rib. So in all my demonstrations today, and when the moving pictures were taken, I selected a rib to work in for that reason. This operation would not necessarily apply only part of the time, when the run was down through the near rib. You could still do the other side and it would not hardly be noticed, except by an expert, or some- 915
one that would notice the difference. In the cheaper class of hosiery you would style that as "first", but not in the higher class on account of that finish.

In my testimony in regard to these various different ways, outside of repairing while the fabric is in the machine, I have had no experience myself; I have testified to what I have seen and heard purely. That has dated back a good many years.

Mr. Hodges: All of the witness' testimony heretofore given with respect to Defendant's

916 *Deposition of Edward E. Busek. Cross.*

Exhibits 4, 5, 6 and 8, the hand method and the finger method, is objected to as hearsay.

Irrespective of this objection, I will proceed to ask you a few questions, without waiving the objection.

I think the method of Exhibit 6 was the method that was used most, because it was easier to handle with that. I would not be able to say how many times I have seen the operation with cylinders that corresponded with Exhibit 6. I knew I have
917 seen them quite often; I would say half a dozen times. I think that was in 1910, because we had been experimenting with different ways of latching up fabrics. I saw this done with considerable speed; the operators got pretty efficient at that. I have seen them operating over one of these cylinders like Exhibit 6 where there was more than one run. I do not know exactly whether or not I seen them use that in the toe of a full fashioned stocking. I have seen them do it where the fashioning threads or loops were dropped from the needle and joined to the rest of the fabric of the stocking, where sometimes a fan-shaped run occurred, maybe half
918 a dozen or a dozen runs. I don't know how many runs; I know there have been more than one run. I am not prepared to say how they handled the various runs when they did that to keep them from running more as they pulled it over the tube. I never stayed long enough to watch how that was all done. I observed this as I passed through the place, just kind of casually. I had no interest in it, not at that time. Lately I have had a great deal of interest in it just to show what I have seen.

XQ534. When did you first hear of the Stelos method or system of repairing hosiery?

Mr. Orton: Same objection. This witness has given no testimony that he knows anything about the Stelos system.

(Testimony taken subject to the objection.)

A. I have seen it in Philadelphia when I was down there for the exhibit or show.

That was probably two or three years ago. I guess, probably when it was there that first time. I could not say the exact year. I know it is several years it has been down there. I cannot tell the exact date. 920

XQ538. Under what circumstances did you see it there in operation? A. I saw—

Mr. Orton (Interrupting): Objection is taken to this line of questioning on the ground that no reference was made in the direct testimony to any exhibition by the Stelos or any other company at Philadelphia at any time.

(Testimony taken subject to the objection.)

MR. HODGES:

XQ539. Answer the question. 921

Mr. Hodges: Read the question, please.

(Question read.)

A. I have seen it there as an exhibit.

I would say more than once, several times. You are bound to see it every time you go by. It seemed to have attracted some attention. I do not know how much. When I was around there, there was always a few people around it, sometimes more and sometimes less.

922 *Deposition of Edward E. Busek. Cross.*

XQ546. Did it look new to you?

Mr. Orton: Same objection.
(Testimony taken subject to the objection.)

A. The first time, yes.

The matter of this evidence to get me to testify was taken up with me, I guess, last year, when this other suit was up. I talked about it to Mr. Oswald of the Bear Brand Hosiery Company, and I think his lawyer was Mr. Olsen; I am not sure
923 of the name, but I think it was Olsen. I guess that was about a year ago. I knew as much about it as I say. I cannot tell you how they came to find me. They tried to find out from me merely the same as this, if I was latching the way it was done before.

XQ554. When you saw the Stelos exhibit in Philadelphia, did you remark to somebody that that was new or old?

Mr. Orton: Same objection, and this objection will apply to all questions asked with reference to the exhibition at Philadelphia by the Stelos Company.
924 (Testimony taken subject to the objection.)

A. I knew it was old, so far as the operation was concerned.

Mr. Hodges:

XQ555. That was not the question. A. I do not know as I just made any definite remarks about it.

XQ556. But you had never seen anything like it before in the way of speed and skill and different conditions that were dealt with, had you?

Mr. Orton: Objection is raised on the ground that it is indefinite.

(Testimony taken subject to the objection.)

A. Not just exactly like that.

XQ557. Do you not think that the operators that you have seen repairing at the Phoenix Hosiery Company, would have continued, if they had been doing it like the Stelos method?

Mr. Orton: Objected to on the ground it is asking the witness for an opinion or a conclusion, and not for facts. 926

(Testimony taken subject to the objection.)

A. Well, they had their own method of doing it, which they seemed to think was better.

They experimented with half a dozen different methods. It has all been a matter of experiment, as far as these exhibits here are concerned.

There are 84 ribs in the fabric that is contained in Defendant's Exhibit 2. That is 18 gauge hosiery. I call it 18 gauge because the needle uses 18 gauge. The number of gauge is also applied to the number of cross threads per inch in hosiery.

I have never seen any of my operators operating 927 on sheer hosiery where there were 50 or 70 cross threads to the inch, not as fine as that, not on seamless. I have never seen them, but we did make them as fine as that. They always operate on fine hosiery. I do not know just exactly the amount per inch, but it is pretty thin. We make them as fine in the seamless as 38 or 40 per inch. You measure that as your fabric comes from the machine, without stretching it. There would be 38 or 40 threads to the inch. We do not call that "gauge." It is not always applied that way.

928 *Deposition of Edward E. Busek. Cross.*

I do not think I have ever seen anyone operate on a run as fine as 50 threads to the inch on a cylinder like Exhibit 6. When we experimented with this tube, we did not have as fine a fabric as that. It was say 20 or 25 to the inch, not over 20 or 25 to the inch. The same is true of the embroidery hoops and the glass tube. That applies to practically all others that I have testified to.

XQ586. How many would you say were in these fabrics you were operating on when the moving pictures were taken today? A. I can count them. (Witness counts.) About 12 on this one.

929

Mr. Orton: Objection is taken to this question on the ground that the exhibit is in evidence and speaks for itself.

(Testimony taken subject to the objection.)

A. In all my operations today, I have restored a very short run and a single run.

They now use the finger method with the fine gauge hosiery. I am not really enough experienced to say whether the finer it is, the more they are likely to use the finger method, but I have seen them using the finger methods all that time. They

930 are using it today, practically, as much as I know, and ever since I have been there.

The cylinder, Exhibit 6, is not an original, but was simply made for the purpose of illustration for this testimony. I think it was made in our machine shop. I could not exactly answer that. I would not know. I do not know who made it. Mr. Weinholz can say who made it, I think, from the shop there. I know he had it made up, under his instructions. I think he is to be one of the witnesses. I don't know whether he is or not; I cannot answer that. This is the same one that I had

at Philadelphia. It is practically the same as the ones I have testified about as far as I can recollect, in proportion, and size of slot, and so forth. I don't think the slot ever went through the whole length. It has been 18 years anyway since I have used one, 20 years—1910.

I have not seen them run the heels and toes on these rings or brass tubes, Defendant's Exhibits 5 and 6. In the demonstration I gave, I cannot see where it would make any difference if the run happened to go in the opposite direction, for instance, toward the heel. The reason I showed it here, this 932
fabric could only ravel one way. A ribbed fabric would never ravel any way but one way. It is impossible for you to ravel it this way (illustrating). It would always ravel toward the upper end of the stocking; a ribbed fabric would. That is all ribbed fabric that I demonstrated on.

That would not be true of very sheer hosiery; it is not ribbed. And the run would go in either direction. I do not see why it would be impossible to use the tube under those conditions. You could turn this around and do it the other way. I have seen it done. We do it all the time, either way. It does not make any difference. We can pick up
stitches going this way (illustrating) or this way 933
(illustrating). I mean to say, we do it over the hand all the time. With the tube you could run it either way, so far as the run is concerned, you could mend it up either way; it would not make any difference. You can put the stocking down the other way. You can merely turn the tube around with the stocking and work the other way.

If an operator put her hand in that stocking and the runs went in opposite directions, I suppose she would work it from the top down. You can pick up

a stitch; if you have hold of it, and it runs both ways, you can start here and go all the way up on it just the same, even if there is a snag in the center.

I suppose it does not make a great deal of difference that the needle I am using, Defendant's Exhibit 4, is considerably smaller than the needles in the machine, Defendant's Exhibit 2. I could use a still finer one or a coarser one. For this particular fabric, I could use the coarser one.

The needles used back in 1910 or 1912 were not
935 exactly like Defendant's Exhibit 4 in size, but they were in shape. All these needles are different sizes. There are different length latches used for different classes of work. They have their short latches, and still longer; it all depends on what kind of a job you want to do. This needle is not magnetized, unless they maybe magnetized it handling it here. We never magnetized it. You could not use it in a knitting machine if it was magnetized. It has not been used in a knitting machine yet. It is a knitting machine needle, but it has not been used as a needle yet, as I can see it, I just picked it out of a box.

This particular make of needle, I could not
936 say, Torrington—Connecticut, Torrington Needle Company. This particular needle was procured probably a month or two ago. It was not procured for our repair work. It was taken out of a batch of needles that would go into a machine.

These various exhibits, 5 and 6, were stretched on the goods upon which the operation was being done, in an experimental way. So when you clamped in the rings, Exhibit No. 5, and it was slid over the tube, Exhibit 6, the goods were stretched and held by that means.

After adjournment.

In working over the tube, Defendant's Exhibit No. 6, we did not find that easier and quicker than working over the finger or thumb.

I do not know what became of these holders.

The repairing department is occasionally open to the public, but not in the general practice. We do not want everybody coming through there at all times. We take anyone that feels that he wants to come through, and we feel he is entitled to it; we let him through. But it is not open to the public 938
generally. What is going on there is more or less confined to the mill end.

I have no interest whatever in any repairing work on that side. I have never had. I do not know Mrs. Isabelle C. Metler, of the Retail Educational Service of the Phoenix Hosiery Company. I do not know whether she is still there; I do not know her at all. That would not come under my department.

REDIRECT EXAMINATION BY MR. ORTON:

Mr. Orton: Without waiving my objections entered at the time this witness was being 939
cross examined on the so-called Stelos method or patent, I wish to clear up one or two points in this connection.

I went to Philadelphia on the occasions when I saw the Stelos method there, in the interest of the firm, for anything new pertaining to the hosiery business, mainly in the knitting line, those things that merely related to my own department. I observed whatever was possible that would do me any good in my line of business. I cannot say that

940 *Deposition of Edward E. Busek. Redirect.*

I was particularly interested in this demonstration of the Stelos method. I observed it, just as I would observe anything else that was displayed there.

I got as near to it as the general public did. The thing was fenced up, and I was as near as I could see it, probably three or four feet from it, and see what the operator was doing. I seen her latch up a stocking with a latch needle, as near as I could see it there. I think it was a latch needle. She had the stocking that she was repairing over a glass or cup. I cannot quite describe just exactly. I
941 don't remember just exactly whether it was a cup or something made especially for that purpose. It was similar to a glass anyway, that the fabric was stretched over, and the run was being latched up.

RDQ662. I will ask you, going down particularly to the details of the operation: Did you particularly notice whether the needle which she was working was held laterally out of alignment with the run? A. I do not know what you mean by "laterally out of alignment."

RDQ663. Was the needle inclined to the run, at an angle to the run?

Mr. Hodges: Objected to as leading.

942 (Testimony taken subject to the objection.)

A. It was in that way, yes, sir.

This Stelos operation did not strike me as being new; it struck me as being very familiar, similar to what we were doing at all times, similar to what we had been doing; it seemed like an old operation to me. I was not impressed with the fact that it was new. It looked very much similar to the method which had been used by the menders in the Phoenix Company for some years prior to that.

RDQ669. So that at the time you observed this Stelos method, you thought it was the same method with which you were entirely familiar.

Mr. Hodges: Objected to as leading.
(Testimony taken subject to the objection.)

A. It looked like it.

I did not pay enough attention to it after that, thinking that it was just a common operation in our line of work. This Stelos method, as I observed it the first time, did not differ from the methods which I saw used by the menders in the Phoenix Company about 1910, as I testified yesterday. I was not impressed by anything new that I saw, outside of, perhaps, the speed the operators were working at. They were exceptionally fast. I saw just one operator at that time. And that operator was quite speedy. 944

The pivoted latch needle with which she was working looked to me like an ordinary latch needle like we are using; I did not get hold of one to examine it very close. I could not say whether it had a side guard. I did not take any particular notice of the length of the latch. I do not know whether or not that needle was magnetized. 945

I have no explanation to offer as to why this particular operator that I saw operate the Stelos needle was faster than the menders in the Phoenix Company who were apparently operating by a similar method, unless the operator has been continuously at this kind of work and they get very efficient at it. We have operators doing it our way that are just as efficient, and do it just as fast. At present we have operators that can work that fast.

946 *Deposition of Edward E. Busek. Redirect.*

RDQ683. So that when you said that the Stelos operator worked faster, you meant that she worked faster at this time, which was a couple of years ago, than the operators in the Phoenix Company who were operating by the same method in 1910; is that what you mean? A. Yes, sir.

Mr. Hodges: Objected to as answering for the witness, and not asking a question.
(Testimony taken subject to the objection.)

947 Mr. Orton:

RDQ684. Might it not be true that this faster speed of the Stelos operator, compared with the speed of the operators in the Phoenix Company in 1910, might be due to some characteristic of the needle which she was using?

Mr. Hodges: Objected to as leading.
(Testimony taken subject to the objection.)

A. Who was using, the Phoenix or the Stelos?

Mr. Orton:

948 RDQ685. I understood you to say the Stelos operator was using a needle, and you also stated that she worked faster than the operators in the Phoenix Company in 1910; and I am endeavoring to have you give some suggestion, if possible, as to what was the reason for this faster speed on the part of the Stelos operator.

Mr. Hodges: He has already answered—due to practice and skill.

Mr. Gilligan: And also said that he saw no difference in the needle. He has already made that statement.

Mr. Orton: He said that he did not see the needle close enough; he thought that it was a pivoted latch needle.

A. Yes, sir. From where I could see, it looked like a pivoted latch needle.

RDQ686. Does the character of the pivoted latch needle have anything to do with the speed of operation in repairing loops or stitches in runs in hosiery? 950

Mr. Hodges: Objected to as leading.

(Testimony taken subject to the objection.)

A. The needles we have been using, they are all about the same, as near as I know. I do not know of any other needle that we have used.

For many years, I have been the head of a department of the Phoenix Knitting Company, and not a knitter. I am superintendent of the seamless knitting department. As such superintendent, I would not have occasion to reloop as a regular thing. I would simply do it occasionally. 951

RDQ691. Is it not your business, as superintendent of one of the departments of the Phoenix Company, to know, at least in a general way, what is going on in the different departments, including the repair department?

Mr. Hodges: Objected to as leading.

(Testimony taken subject to the objection.)

A. Yes, sir.

952 *Deposition of Edward E. Busek. Redirect.*

MR. ORTON:

RDQ692. And as a superintendent of a department in the Phoenix Company, you go around, do you, from department to department?

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

A. Yes.

MR. ORTON:

953

RDQ693. Was it any part of your business in 1910 to know how the menders re-looped runs in the repair department?

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

A. In a casual way it was, yes.

MR. ORTON:

954 RDQ694. You were particularly interested, were you not, as to what happened to stockings, particularly damaged stockings, after they passed from your department? A. Yes, sir.

RDQ695. In this connection, just what did you do? A. Mainly I was supervising the work in the knitting department, and also observed how the other departments were getting out the work.

RDQ696. And you knew, at least in a general way, how they performed their different operations— A. I did.

RDQ. (Continuing.) —up to the time the stocking was finished and ready for sale? A. Yes, sir.

RDQ697. And as part of this duty, you visited the mending department? A. I did.

RDQ698. And it was during these visits that you observed how the mending was done in these departments? A. Yes, sir.

RDQ699. And as the result of these observations, you saw the methods performed which you have demonstrated here yesterday; is that true? A. Yes, sir.

RDQ700. Can you tell us anything about the circumstances connected with your visit to the mending department when you first saw them use the repair method in which they used hoops such as Exhibit 5? 956

Mr. Hodges: All of this is objected to as not redirect examination, and all having been gone over, and answered in the direct examination; and it is just prolonging the examination of this witness unduly and unnecessarily, most of it being leading questions.

(Testimony taken subject to the objection.)

Mr. Orton: The purpose of this re-examination is to bring out more fully matters which were disclosed for the first time in the cross examination. Answer the question. 957

A. I can say that at times I have made suggestions on different methods of how they should try to mend and loop hosiery. This was, I think, somewhat similar to that—the suggestion of trying the hoop.

RDQ701. I was endeavoring to have you explain just how, and under what circumstances, you first saw the operators use the hoops in stretching the fabric for the repair of runs.

Mr. Hodges: Same objection.

(Testimony taken subject to the objection.)

958 A. It seemed to me that they were doing it as a regular operation.

MR. ORTON:

RDQ702. When you saw this for the first time, you carefully observed the mode of operation, did you not?

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

959 A. Yes, sir.

MR. ORTON:

RDQ703. And you understood fully how it was done after you had seen it the first time?

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

A. Yes, sir.

MR. ORTON:

960 RDQ704. After you had once acquainted yourself as to how the re-looping was done, there was no necessity, was there, of repeatedly going back and learning over again how this was done?

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

A. No.

MR. ORTON:

RDQ705. And yet you did repeatedly examine these methods used by these menders after the first time?

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

A. Yes.

MR. ORTON: 962

RDQ706. And, as you stated in your cross examination, you observed this six or seven times, I believe?

Mr. Hodges: Same objection.
(Testimony taken subject to objection.)

A. Oh, yes.

MR. ORTON:

RDQ707. And at each one of these times you saw them perform the methods such as you have described in connection with Defendant's Exhibits 963
5 and 6?

Mr. Hodges: Objection repeated.
(Testimony taken subject to the objection.)

A. Yes, sir.

Mr. Orton: Have you any other questions, Mr. Hodges?

Mr. Hodges: Yes. I want to put in a statement. We move that all of the redirect examination, except such as pertains to the cross examination, be stricken out.

RECROSS EXAMINATION BY MR. HODGES:

I was about four feet from the young lady when she was operating at the Stelos exhibit in Philadelphia; I would occasionally go there. I think there was a slight elevation on the platform on which she
965 was working, because all these exhibits were elevated above the main floor. It was about 8 inches, I suppose. She was sitting directly in front of me. I was looking toward her face.

This exhibit in Philadelphia was—I can't say the exact date; I think it was last April. That was not the first one I had been there to see; I seen it the year before also. I can't say whether it was the first time—two years I saw it the first time, or three years the first time; I cannot remember exactly. I think I have seen an operator there two or three times, different years. I think I saw their first exhibit there, the first time she was there; I don't know what year that was. We always passed
966 it. I did not make any particular effort to stop there, but I have seen it a few times. I did not stop there each time after I had seen it, say two or three times. Each time, I would stay probably ten minutes.

When I said she was doing the same work that "we had been doing right along", I meant back in 1910.

(Deposition of witness closed.)

(Signed) EDWARD E. BUSEK.

Deposition of J. C. RUEDT, of the City and County of Milwaukee and State of Wisconsin, residing more than one hundred miles from the place where the trial of this action will occur, and being a witness mentioned in said order to take depositions and a witness called on behalf of the defendant herein being duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, and being carefully examined, deposes and says in answer to interrogatories propounded to him by Mr. Orton as follows:

My name is J. C. Ruedt; residence, 764—42nd 968
Street; age, 55; occupation, foreman of the knitting department, Phoenix Hosiery Company, which is located at Milwaukee and Buffalo. I am employed in the full fashioned rib department at Milwaukee. When I first came to the Phoenix Hosiery Company, my position was foreman. I came to the Phoenix Company in 1908 or 1907, something like that; 1907, it was.

I was never a knitter in the Phoenix Company, but I was in the knitting department. In my duties as foreman, I would sometimes knit. I started in the glove and mitten business when I came there, and made gloves and mittens for the last 5 years, 969
and then in the rib full fashioned department. Between the time when I first came with them and the last four or five years when I was in the full fashioned department, I made neckties, scarfs, caps and underwear, and outerwear, such as caps, scarfs, ties, wristlets, leggings, coats and jackets. Hosiery is not included in outerwear. I also made hosiery, such as, round knit, round seamless, and also some fashioned. I worked on a fashion machine, a full fashioned machine, about six years ago.

Prior to going to the Phoenix Hosiery Company, I was employed by Friedlander-Brady, at Chicago. That company was in the business of knit outerwear, such as mittens, gloves and caps. I was also foreman there, foreman of the round knit goods department.

I understand the construction and operation of full fashioned knitting machines; and, am skilled in the operation of such machines; I first observed the operation of such full fashioned knitting machines in 1910, at Phoenix Hosiery. I was not in the full
971 fashioned machine knitting department at that time. I had many occasions to go up there and, of course, I was curious, and I used to watch them knit. I went up there very often. I was foreman of the knit goods department, and I used to go up there and watch them knit, because I was curious of going to see what they were doing, and how it was done.

I am now foreman of the full fashioned rib department. We make the upper part of the sock; it makes a ribbed web on the upper part of the sock. A ribbed web is more elastic than the plain web. In the full fashioned department, they make the plain web stocking, not a ribbed, with a single
972 needle machine. The rib machine is a double needle machine.

A stocking is made of yarn, of yarn and silk; and they make them out of different materials. Of the parts of the stocking, you call that open end a welt, and the rest is the leg, and the balance is the heel, and the foot, and the toe. All of these parts are not made on the same machine; the leg and the top are made on one machine, and the foot is made on another. By "top" I mean the welt. They do not make the welt in my department; that is on the

stocking; I make full fashioned ribbed tops for socks; that is a similar machine as the full fashioned stocking machine, with the exception of it being—it does not narrow, and it has a double set of needles in it. I am now referring to the machine in my department for making the ribbed tops. We take the ribbed tops that are made in my department and transfer them on the full fashioned machines to make the socks; and the sock is then completed on the full fashioned machine.

In making a full fashioned stocking in the machine such as is used in my department, we have 974
the vertical and horizontal needles, and one feeder feeds both needles; and by using two sets of needles, you get an elastic, or, what they call, a ribbed stitch. These machines are of different lengths. Some of them are 36 feet and some come 10 feet. Some of them make 24 ribbed tops at a time, and some make 15, and some make 12, and some make 8.

In these machines, there is a spring bearded needle traveling in between the other needle. The vertical needles are arranged right next to each other, in line. Horizontal needles are arranged in the same way, in a line. The needles are operated by different cams on the shaft of the machine. In 975
operation, these needles go up and down, and as they come down, they receive the stitch, and also close and form the loops. One set of needles goes up and down, and the other set goes forward and back. The horizontal needles go up and down, and the vertical, go in and out; they go through one another, that is, pass one another.

The needles in the full fashioned machine stand horizontally in a line. They are fastened into a frame, and from the frame it works off of these

cams that are on the machines; they work up and down. That is not my department. The operation which I have just described in connection with the full fashioned machines is the same as the operation which I have described in connection with the ribbed machines in my department. Both machines work the same operation; they are identically the same.

The ribbed fabric which is made in my department is not the same in appearance as the fabric forming the leg portion which was formed in the
977 full fashioned department. This difference in appearance is caused by the double set of needles in the rib top machine in my department. In the double set of needles, one works horizontally and the other works vertically. In the machines in the full fashioned department, they work horizontally. They only have one set of needles, disposed, vertical, or horizontal, in a straight line; they are really the same kind of a machine as the rib machine. The needles are sticking up, and when they move, they move up and down. When I said a moment ago, these needles moved horizontally, I meant up and down. Except for the fact that the machines in my
978 department have two sets of needles, and the machines in the full fashioned department have only one set of needles, there is no other distinction between these two types of machines. An operator skilled in the use of one of these machines, could operate a machine of the other type. The operation is the same.

In the picture on page 40, of the April 12, 1930, issue of "The Textile World," these are the needles here that run vertically; they work up and down. The needles run from here over to here, in a straight line. (Witness marks the needles) "A" is

the needle that stands vertically, straight up like this (illustrating). The needles are in a line from this point to this point marked "B", indicating, from points "B" to "C". And these here (indicating) are carriers, marked "D", to carry the yarn across the needle. These carriers reach right along here and feed these spring beard needles the yarn, or silk. As it feeds them with the yarn, these "A" go down and form a loop; and as the needle "A" comes back up again, the carrier goes across once more and feeds the needles again with the yarn, which forms another loop. The needles form the 980
loop. The carrier feeds the needles. By feeding them, it gives sufficient yarn to make the loop, just like a shuttle. The carrier, as it goes back and forth, feeds yarn to the needles, and the needles going up and down make the loops. These different loops form the stocking, which I will mark "E". This operation is continued to the foot part; and then they take this leg "E" and transfer that. They take this leg apart and transfer it onto another machine, a footer, and the footer finishes the foot, that is, the heel, the foot, and the toe. I see the heel in the showing, at "F". The machine at which I am looking is a footer. That footer differs from a full
981
fashioned machine which I have been describing heretofore in that it has these transfer points on here (indicating), transfer points "G" that narrow the stocking, narrow the foot. Except for this narrowing device, there is no difference between the machine shown on this page and what I have been describing as a full fashioned machine. That full fashioned legger also has a narrowing device with only probably ten needles, ten transfer points on each side; that is here (indicating), that would be "H". Outside of that, the machine is the same. The

only difference in these two machines is in the number of transfer points in the part which I have marked "G". Otherwise, the machine is the same.

The fabric part marked "E" is in front of the machine. It feeds off toward me. That comes out of the machine, straight out onto a roller, and it is rolled up. On this machine, on that footer, they have no roller, but on the legger they have a roller out there marked "I", that rolls up the work; they call it a weight or a tension. The roller is on the point of the arrow.

983 The part marked "J" is rods running across, or bars, probably where the rocker arm operates these needles. The fabric is not in engagement with this rod "J"; there are different rods in here all along in the machine that have rocker arms that are lifted with a cam, and these rocker arms are also fastened onto these different parts here that operate the needles, and so forth, here (indicating).

The roller at the pointed end of the arrow, is level with the needles "A". They are both at the same distance from the floor. The fabric "E" then coming off from the bank of needles "A" is horizontal. As the fabric "E" extends horizontally toward you, as it comes off the machine, it is possible to get un-

984 der this part of the fabric (indicating). You can get your hand under it and lift it up, if you want to, but not while the machine is in motion. If the machine was in motion when you tried to lift it up with your hand, the webbing or the fabric would get on top of the needle here, and it would not knit. You can get back here (indicating) but not up here (indicating). It would not be good policy to get under the fabric at any time the machine is going. You can get under the fabric as it extended from the machine. The fabric is kept down by what some

call jacks; you cannot see them here; there are jacks that go over this webbing here (indicating); jacks that go in between the needles, that hold the webbing down at the needles. They are there all the time.

The weight holds the fabric down in advance of the needles and pulls it down on the needles, and places it even with the needles. The weight is at the end of this arrow, and is engaging the end of the stocking. That is not on the picture because this is the footer (indicating). There is a roller along here (indicating). The weight is on the end of the 986
machine. It rolls up the roller. The stocking is rolled on a roller, and it is the roller that keeps the stocking tension, with the weight on the end of the machine.

These needles "A" break very often. If one of the needles breaks, it would form a drop stitch, drop the loop; it would run down. It would be a drop stitch running to "K" from the needles. (Witness marks letter "L" at the position of broken needle which would cause such a run.) A drop stitch would be a thread running from one needle to the other without being looped. It looks like a plain thread running across from one loop to the others. 987
One thread can cause one drop stitch. A drop stitch is simply one loop missing; only one would be a drop stitch. When a needle breaks, sometimes it runs down probably ten loops. The appearance of a run is a wider open space in between two of the loops. In a run there would be one of these spaces for each loop. The number of these loops which have become unfastened depends on how far it would run; it would run down ten or probably twenty stitches, and it would drop off these loops. A run would look like a misknit, with no loops.

That stocking (indicating) has a run in it. In the run, there are small threads running across from one loop to the other. There must be one hundred of these threads in there. One thread there is above the other here. This one has a loop, and the other one has no loop. One stitch is looped, and the other one is not looped. The threads run crosswise; they are crossed from one to another. Both of them are straight across, parallel to each other. That applies to all of the threads that form the run. The line marked "L-K" is formed of such
989 parallel threads.

If such a run should form on the stocking blank that was mounted in the machine as illustrated in connection with the showing on page 40 of the Textile World, the operator would take a latch needle, and latch that up until he came to the needle, and then transfer it onto the needle. To do that, he would take the last needle and get in there and latch it up until he got to the needle. His left hand would be under the webbing in such an operation; he has to lift it up from the needle. He would not take it off from the needles; he would lift it up to the end of the needles and then pick
990 up his stitches. He would raise the portion which I have marked "B-C" up into the beard of the needle, that is, the top of the bank of needles "A". In performing such an operation, his left hand would be underneath here, at "M". Otherwise the stocking blank would be in the position shown in the picture. He had to raise his stocking blank in order to perform this operation, because he could not very well get at it on account of the stocking blank being too close to the machine; he would have to raise it up so that he could get his hand under

it, so that he could pick up the drop stitch. This lifting of the fabric would not change the stretched condition of the fabric. It would still be stretched.

He would take a pivoted latch needle to effect this relooping. A pivoted latch needle is a needle with a hook, and a latch to cover up the hook, to form a loop. The hook is on the end of the needle. On the other end of the needle is where they had the little block of wood to fasten the needle into so that they could hold it. This block of wood had a handle. The pivoted latch was close to the hook, inserted into a slot, with a pivot. One end of the 992
latch was pivoted to the needle. As you put the stitches on the needle and work it forward and back, it would form a loop and repair the stocking. The knitters had these latch needles available for this purpose.

These latch needles without the handles were used on the seamless machine, knitting fabrics. This pivoted latch needle was used in my department at that time. We got this needle from the Franklin Needle Company, as far back, say, as 1921. There was no difference in these needles used for this relooping operation on the full fashioned machines from the similar needles used in 993
the circular knitting machines. They were the same needles. This here (indicating) is a needle of the type which I say was used in this work prior to 1921.

Mr. Orton: Defendant at this point introduces in evidence the page 40 of Textile World, of April 12, 1930 edition, marked by the witness in answer to the preceding questions, and asks that this be marked "Defendant's Exhibit 9."

(Said exhibit was so marked "Defendant's Exhibit 9.")

Mr. Orton: Defendant introduces the stocking blank, having the run, referred to by the witness, and asks that this be marked "Defendant's Exhibit 10."

(Said exhibit was so marked "Defendant's Exhibit 10.")

Mr. Orton: Defendant introduces one of the two pivoted latch needles just produced by the witness and asks that it be marked "Defend-
995 ant's Exhibit 11."

(Said exhibit was so marked "Defendant's Exhibit 11.")

The pivoted latch needle, Defendants' Exhibit 11, is a piece of steel, with a hook, and a latch to cover the hook. This is not exactly the same needle as the one in connection with which I have been testifying; it probably has a larger latch, a little bit larger than this, but not much. Defendant's Exhibit 11 is about the same as the latch needles which I said were used in repairing runs on full fashioned hose while mounted in the machines at
996 the Phoenix Hosiery Company prior to 1921; probably the latch was a little longer. That is, the needles that were used in 1910 had a latch a little longer than the ones used at present, than that as shown in Defendant's Exhibit 11. I have been using pivoted latch needles having the length of latch shown in Defendants' Exhibit 11 about ten years. The change was made in the length of the latch because of shorter movements of the needle coming up and down as it was in the fabric, in the machine. There was no difference in so far as relooping runs in the fabric was concerned, as to the length of the latch.

997 Taking Defendant's Exhibit 11 in my hand in the way in which I held it when relooping runs on stocking blanks while mounted in the machine, as I have testified, I held it this way between my thumb and the first finger. I am left handed. A right-handed mender held the needle the same way in the right hand. You put the needle between the thumb and the forefinger, and hold it; you put it in from the side and work it up and back to form loops. In putting it into the fabric, you run it in from the side of the fabric, from where the drop stitch was. I put it to one side of the drop stitch.

998 I use my right hand to write. I am now holding a pencil in my right hand. Except that I hold the pencil in the right hand while I hold the needle in the left hand, the position of the needle is the same between the thumb and forefinger as the position of the pencil. When there is a drop stitch, you put the needle in from the right side, and you run it down toward the left. As I observed the menders at that time who were right handed, they held the needle in the same position in which I am now holding the pencil in a writing position.

999 With the illustration on the sheet, page 40, of Defendant's Exhibit 9 lying flat on the table, poising the needle as if I were relooping a run in the manner in which I saw such runs were relooped prior to 1921, I put it in like this (witness illustrates). The needle would be on a left angle, going from the left here. It would run in on the side here. The needle is vertical, up and down, relative to the table on which page 40 rests.

I now have the needle in the way as if I were about to repair a run on the table cloth which is now on the table. We have an up and down movement here. I am holding the hook downward

towards the fabric. The other end is in my hand, between the thumb and the finger. My thumb and finger are not over the hook end; they are at the other end of the needle. I am pointing towards the table now, and the rear end which I hold in my hand is positioned above the table, and the hook end is towards the table, at the table, but the end I hold in my hand is away from the table. My hand is nearer to the edge of the table than the point end. I can see the hook end of the needle. The upper part, the one that is in my hand is at
1001 the left of the hook. I am sitting squarely facing the table, and the needle is directly in front of me.

Q282. Now I will replace in front of you Defendant's Exhibit 9, and will ask you to again pose the needle as it was positioned by the menders of the Phoenix Company prior to 1921, placing the hook end of the needle in that position on the figure where it would be disposed if you were attempting to repair the run indicated by the line "L-K"; and having so positioned the needle, I would ask you to describe its position with reference to this line "L-K". A. The hook is closer to the needle than what your hand is.

1002 I mean, closer to the needles "A", and my hand is farther away from the needles "A". As I am holding it at present, the hand is to the left of the line "K-L", and above the fabric. The needle would be on the left side of the line of the drop stitch. The drop stitch line would be parallel, and the needle would be—I don't know what you would call it—it would be running it in from the side, the left side. Holding the needle in the position in which you would hold it if you were about to run it in, you hold it on a slant, to the drop stitch. You hold it at a slant to the line "K-L".

Holding the needle in this position and at a slant to the length of the run, when the menders proceeded to reloop the run, taking the needle in their hand, they would run it through the loops, run it through the stitches or the threads. After that position the first movement is take your hook and take up the loop in the position like this (illustrating). Take up your loop first, the last loop that was on the run, the one nearest to me. I inserted the hook end of the needle into the loop, and you push your needle down in between the first thread, and, as you go down, that loop opens up the latch, and as you go down you insert the needle far enough so that the loop will go in back of the l[illegible] and as you come back, the same loop closes the latch, and at the same time it also catches another thread before it; and as you draw it back, it will form another loop. You insert your needle into the webbing far enough down so that the loop gets in back of the latch; and, as you draw back you catch another thread, and that loop that is on the latch will close it, and you draw your thread through the second loop, and it will form another loop. 1004

By this description I have formed two loops. In limiting the operation to one loop, you take the needle and insert it into the loop, and insert your needle through the webbing, so that the loop will get behind the latch as you go down; and as you draw back, that same loop that is on the needle will close the latch; and in the meantime, there is another thread that runs across before the hook, goes into it, and you draw it back, and draw it through the other loop. In doing this, it takes up the drop stitch,—forms a perfect hose. You take the second loop and put it back on the needle, and 1005

it forms a perfect stitch. After you formed the second loop, the first one was knitted up,—looped up. It made a perfect stitch. It was on the webbing, that first loop that I had my needle inserted into was left behind the second loop. When I finished forming the second loop, the first loop was in back of the needle. It got off the needle by pulling the thread through the last loop.

Calling the first loop "Loop No. 1" and the loop just formed "Loop No. 2"—, when I had completely formed Loop No. 2, loop No. 1 was in back of
1007 the hook end of the needle with reference to loop No. 2. I put my needle through loop No. 1 and I inserted my needle all the way down, so that No. 1 got back of the latch; and when you pull the needle back No. 1 loop will close the latch; and in the meantime you get No. 2 thread, and, by pulling that through the first loop, it would form another loop. By "another loop" I mean loop No. 2. No. 1 loop was pulled through No. 2. The first loop, as you put the needle in, you draw or push the needle down, and put it behind the latch,—the first loop—and as you draw back that second thread goes into the hook, and the latch closes by the first loop;
1008 and you draw it through; that makes one loop. That makes the second loop—no, it makes the first formed loop. I already had loop No. 1 to start with; and that made the second. Loop No. 2 was drawn through loop No. 1. After I had drawn loop No. 2 through loop No. 1, loop No. 1 formed a stitch. Loop No. 2 was formed and drawn through loop No. 1, in back of the needle—off the needle. It had escaped from the needle and formed part of the balance of the fabric. After having formed loop No. 2 you take that and put it on the knitting machine needle.

If the run was formed of a large number of drop stitches you would loop them up until you got to the needle, and when you got to the knitting needle on the machine, you would transfer it onto there, as I put the last formed loop into the machine knitting needle.

After adjournment.

Describing the operation performed after I had formed the loop No. 2 and the positioning of the last loop on the machine knitting needle—as you 1010
form these loops, these loops come off the hook, as you go along, until you come to the needle; and as you come to the needle you put the last loop onto the needle, and it forms a perfect fabric. The loops that are relooped between the first loop, and the last loop which is put on the needle, are all alike. They are formed by drawing the needles through, as in the operation that I have described with reference to the formation of the first loop. You simply repeat the operation until you are all the way up to the needles, and each loop is formed in the same way as the preceding loop.

Q358. You told me that as you put the needle 1011
in that first, or any other of the loops, that it was inclined to the run. Is this always true in all positions of the needle during the entire looping operation? A. Yes, sir.

Mr. Hodges: That is objected to as leading.
(Testimony taken subject to the objection.)

During the looping operation, the position of the needle does not change with reference to its inclined position to the run.

1012 *Deposition of J. C. Ruedt. Direct.*

Q360. It is always inclined to the run?

Mr. Hodges: Same objection there.
(Testimony taken subject to the objection.)

A. Yes, sir.

Q. As you go along you get the next thread into the hook end of the needle by inserting the hook end of the needle into the webbing and the drop stitch, and as you draw back, you catch the first thread that is before it; as you insert the needle, you push down your hook into the fabric at the
1013 drop stitch, and you push down far enough so that the loop will get in back of the latch. As you draw back, you get a stitch in the hook of the needle, and the loop that is on the needle is in back of the latch, it closes it and catches it in there, and, as you pull that through, you drop that first stitch off. It is not the latch that gets the advanced thread in the book; the hook gets the advanced thread, and the latch covers the hook so that it cannot escape; it cannot get out. As I start to bring the needle back towards me, the thread in advance of the needle is above the hook. It is the lifting movement of the needle that causes the hook
1014 to engage under the advanced thread.

Q369. And as you continue to loop, then, the loop already on the needle imprisons or closes, then, the hook, or the thread which has just been caught, is that right?

Mr. Hodges: Objected to as leading.
(Testimony taken subject to the objection.)

A. Yes, sir, that is correct.

I first saw the operation of relooping runs while the fabric was positioned on the machine, as I have

described it, about between 1910 and 1911—about the time the Phoenix Company first installed full fashioned machines. This method of relooping runs is used by the Phoenix Company at the present time. It has been used since about 1910 up to date. During all that time they relooped runs as I have described it.

Sometime runs form in stockings after they have been removed from the machine. Such runs are caused probably in handling or steaming, or the rough boards. These are regarded as damaged goods. In the Phoenix Hosiery Company, they 1016 take such damaged goods to the mending department, and loop them up with latch needles. I am acquainted with the practices of repairing runs in hosiery in the mending department. The Phoenix Hosiery Company had a mending department when I first went with them in 1909. At that time I had occasion to observe the methods used in their mending department, in so far as repairing runs in hosiery was concerned, after the hosiery had been removed from the knitting machines. I frequently visited the mending department, because some of my work went there that needed repairing, and also reports came in about drop stitches and so forth, that I went to see. The reason I went there 1017 to see was on account of probably they could fix the faults on the machine, and also to see how it was mended up, how it was looped up, finished up properly. I thought by inspecting the damaged goods in the repair department that I might correct some deficiency in the machines in my department.

The menders in the mending department used to have a hoop that they stretched the work over, picked up the stitches and mended them; also used

the cup, and they used the hand also, palm of the hand; that is, stretched the work over the hands; but it was mostly with the hoop. By the hoop I mean one of those things there (indicating Defendant's Exhibit 5). They used to do it two different ways; one was to put the hoop over, and the other was to hold it below. I can show you how they worked that. I will take this stocking here (Defendant's Exhibit 10) and draw it up like this (illustrating). I put the fabric over the hoop and spread it out so that you can get at the drop stitch.

1019 The hoop I am handling is in two parts. I stretch the fabric over the hoop so that it will pull—I stretch it over one and onto the other one there—the smaller one and the larger one; you insert the webbing over the smaller one and put the larger one over the smaller one with the webbing in between there. It stretched out the webbing and gave me a chance to pick up the drop stitch. The balance of the webbing, I held in my right hand. The menders held it in their left hand. I am holding it in my right hand. I am now holding it in the proper position in which the menders held it at that time. The menders at that time seemingly rested their hand on a table.

1020 In the fabric as I am now holding it, the run is positioned towards me—the loop end of the run is toward me and the other end of the run is from me, extending straight away from me. With reference to the top of the table, the fabric is positioned in the same way that the table extends and I am looking down on it.

In the normal operation with a right hand operator, he or she would have a regular latched knitting needle in his or her right hand. A latched knitting needle is a flat piece of wire, with a hook

1021

attached to one end, and a pivot latch; and on the other the wooden handle. (Witness picks up Defendant's Exhibit 11). The device they held in their right hand corresponded to Defendant's Exhibit 11. The bent portion at the end of Exhibit 11 was not in the hands of the menders at that time. The bent end was cut off and the wooden handle was attached to the needle. Except for the wooden handle, Defendant's Exhibit 11 corresponds in all particulars to the device which was used by the menders at that time.

1022

The menders put their needle through the first loop—that is the first loop nearest to me; they took their needle and inserted it into the webbing, and, as they went down in that webbing, that first loop opened up the latch and inserted further, until the thread got behind, or the loop got behind the latch. and then it was drawn back. By "behind" I mean in back of the latch. And as they drew back that same loop closed the needle, and in the meantime they got another thread over the hook, and the latch closed as you pulled the needle back, which formed the loop; you pulled the loop over the other one. Then you continued on until you picked up the whole run; and then the last stitch that you had to take up, you transferred onto the needle.

1023

The knitting needle—not on this, of course—I mean the sewing needle. You held that loop, and, taking the sewing needle with a thread, ran it through the loop and fastened it. That was done because there was no more to be looped. That was the finish of the run. The last loop was sewed, to fasten it so that it would not run or unravel again.

They would position the needle at the start of the first operation on an angle to the line of the run. As I am now working it, the whole needle

1024 is above the fabric. In moving the needle into the fabric as I have described it, the position of the needle with reference to the line of the run is still on the angle. Continuing the movement down to the point where the loop opened the latch, the needle with reference to the run is still on about the same angle. Continuing the movement until the loop on the needle is above the latch, the needle is still on the angle to the line of the run. Starting the reverse movement, catching the next succeeding thread, as I have described, the needle
1025 is still on the angle to the line of the run, about the same angle. Drawing the thread in the hook end of the needle through the first loop, thus forming the second loop, as I have described, the needle is still on the angle to the line of the run. During this whole operation, the inclined needle did not change its angle. This was the operation I observed in the Phoenix Company in about 1910.

Some held their hoops this way (illustrating) held them both in their thumb and in their first finger. Of course, this is loose here (indicating). The position of my thumb now, is on top of the hoops—two fingers below and my thumb on top. As I am now holding it, the plane of the fabric
1026 with relation to the table on which I am resting is still on the angle, inclined away from me. I am facing the exposed run. With the hoop held in this position the operation of relooping was performed the same way as the other one. The only distinction between the method of repairing the loop as I have been describing before and the present method, is in the manner of holding the hoops in my hand.

The menders also stretched the fabric over a glass or cup, whichever they had. The cups or

glasses were all different kinds. Some of them had them with small egg cups like this; they are big on top and small on the bottom. Other kinds looked like an ordinary water tumbler. The cups were regular coffee cups.

Q462. I hand you the tumbler which I have just picked off the table, and ask you to position, on this tumbler, the fabric, Defendant's Exhibit 10, in the same manner in which you saw the stockings stretched by the menders over a similar form of glass as you observed it in about 1910. A. (Witness illustrates.)

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In describing what I have done, I put the webbing over the glass, holding the webbing and glass with my left hand. My fingers and thumb are encircling the glass, leaving the top exposed. The run is right in the center of the glass; center of the opening of the glass, extending straight from me. The menders, as I observed them in 1910, inserted the needles the same way as they did before, as they did in the hoops. The operation with reference to the method when the glass was used was identically the same as the method I have just described in the case where I used the hoops.

When I said that the menders at that time sometimes stretched the fabric over the hand—the palm of the hand—that was not full-fashioned work. That was seamless. Defendant's Exhibit 8 is the leg of a stocking and is a seamless fabric. It is the type of fabric I saw them use when they inserted the hand. There is a run in the fabric which I hold in my hand.

1029

Q476. Will you please insert your hand in this seamless stocking in the manner in which you saw the knitters insert their hand in about 1910 in repairing such runs? A. (Witness illustrates.)

You hold your hand from you and then they used to run it up. (Witness illustrating.) You take the fingers and hold them out straight, and take the thumb, and loop it up, and spread the webbing. The run with reference to my thumb is to my left. It is on the right side of my thumb; more in the palm of my hand, the center of my hand, and the fingers are closed together. Holding the hand in this position, it opens up the drop stitch so that you can see it more plainly. It also stretches the fabric. The finger which is beneath the run is not
1031 in engagement with the run. There is a space between the run and the finger just below it.

With the fabric held in this position the menders inserted the needle, just the same as the rest of them, with the hoop or with the cup. That operation was the same.

The method in which the hoops were used, was in use by the menders at the Phoenix Company at least 15 years ago. They used them I imagine about five years. They do not use them at the present time, that I know of. With reference to the method in which they used cups or glasses,—they are using cups today yet. When they use a cup
1032 today, they are doing the re-looping operation with a hand needle such as I have been describing in identically the same method which I have been describing as being used in 1910, probably a little later than that. That is done in the mending department. It is the same department about which I have been testifying. I do not know the name of any member today who is using this cup and practicing the method I have described. I could not tell you how many at present are using the method in which they employ a cup. I don't know. I was last in the mending department, a year ago. I have

not been in there within the last year. The last time I was there they were using cups. I do not know whether or not they are using cups at the present time. When I testified to this method in which the cups were used, I was referring to some period more than a year ago.

Q508. I now hand you the stocking blank, Defendant's Exhibit 10, and the pivoted latch needle, and Defendant's Exhibit 11, and ask you to stretch the fabric across the glass as you did before, exposing the run.

I will now ask you slowly to do just what I di- 1034
rect you to do. You will take the repair device, Defendant's Exhibit 11, and insert it through a loop in the run or raveling. Continue this movement on through the fabric, while holding the device or needle laterally out of alignment with the run.

Continue this movement until the loop has slid back over the end of the latch, and beneath the latter. Then reverse the movement of the device through the loop, catching the next forward thread in the hook. Now cause the latch to close over the thread. Cast off the loop over the end of the needle, and form a new loop with the thread caught in the 1035
hook, so that the new loop will take the place of the first described loop.

Then reinsert the device into the fabric as before, and repeat the operation until the run or raveling has been repaired. A. I am not a mender. It is pretty hard for me to mend this, you know.

(Witness demonstrates.)

Q511. Now I hand you a threaded needle, and ask you to fasten the thread.

1036 *Deposition of J. C. Ruedt. Direct.*

I will now get you to compare the method which I have just dictated to you and which you have performed, with the method which you said you saw the menders at the Phoenix Hosiery Company perform about 1910, particularly with reference to the method where they employed a glass, and tell me wherein the dictated method either resembles or differs from, the method used in 1910. A. It resembles the same.

It resembles the same as we are doing now as in 1910. It is the same thing.

1037 Q516. The method which I have just dictated is the same as that method which you saw the menders use in 1910?

Mr. Hodges: Objected to as leading.
(Testimony taken subject to the objection.)

A. Yes, sir.

Mr. Orton:

Q517. I will now get you to compare this method which I have just dictated to you with the method of repairing runs when the stocking blank was
1038 mounted in the machine, and including the fact that in one case the last loop was placed over the knitting needle, and in the other case the last loop was sewed; please tell me otherwise what similarity or differences there was in these two methods. A. Well, one is that the loop was put over the needle on the machine and it made a perfect stitch, and the one that was sewed up with a needle and made an imperfect stitch.

On the m. hine, a loop was continued. On the sewed it was just connected, not continued. Forgetting the last loop, the balance of the operation

was different. One was finished, and the other was unfinished.

The operation in forming the first loop as dictated was the same as the manner in which the first loop was formed when the menders had the stockings stretched across a cup or glass. The second and third loops were the same. All except the last. The whole run in both cases except the last loop, was formed the same manner, or by the same method as dictated, and that was the method which the menders were using in about 1910 at the Phoenix Company.

1040 I have seen a motion picture showing of a method of repairing runs in hosiery, on Wells Street, near Third Street, in Milwaukee. I saw it around June of 1929. The manager of my concern, Mr. Pollock, asked me to go over and see it, to see if it was similar. I do not know the name of the place but I know where it is. I went from the Phoenix plant to it. I think I could lead you to it. Mr. Pollock told me at the time, that they had those photos taken, or the pictures taken of the girl that done the mending, and wanted to know if that was the way they used to mend them years ago. These were old time menders at that time—these two girls
1041 that had their pictures taken. The girls were Pauline Krause and Mrs.—this other lady here—what is her name? I forget her name now. The one you were talking to down there the other day, last week, or the other day, down to the Phoenix. I think her name was Converse. I do not know her first name.

I do not know whether Mr. Orton was at the Phoenix Company at Milwaukee a short time prior to my viewing these motion pictures. I don't remember whether it was he or not who interviewed

me about that time in connection with the matter in which I am now giving testimony. There was somebody there. I did not remember him any more. I do know that some attorney interviewed me about that time in connection with this matter. I went from the Phoenix Hosiery Company where I was employed down to this place on Wells, near Third. This Mrs. Converse and Miss Krause and a chauffeur went with me, and there was another lady there; there was another girl there; she had the films; and myself.

1043 We went in there, and they took us in a room and showed us the movies, and they turned the lights out, and we sat there and looked at them. They wanted me to go down and see if that is the way they used to do it. It was the way they used to do it. I only know the reason Mrs. Converse was with me was because she used to do the mending in that way. Miss Krause was with me for the same purpose, for the same reason. Mr. Pollock told these two menders to go with me. I don't remember whether I was present at the time he told them.

Mrs. Converse and Miss Krause were the only ones that I know of who posed for the motion pic-
1044 tures which I witnessed at that time. I was not present at the time these pictures were taken.

Miss Krause is not employed at the present time by the Phoenix Hosiery Company. I think she left about five years ago. She was there in 1910. She was forelady of the outer knit goods department, finishing department. She was forelady there about 1915—from 1915 on until five years ago, until she left. Her duties as forelady were finishing; also mending outerwear mostly. I don't remember whether she ever mended stockings. I could not

say whether stocking menders were employed in that department of which she was forelady, because I know later years she did not have any hosiery; she did not have any before that. The menders repaired knit goods in her department but not hosiery. They repaired runs in knit goods other than hosiery, the same character of runs as I have been demonstrating today in connection with the hose.

Considering the practices in the Phoenix Hosiery Company prior to 1921, there was no difference in the method of repairing runs in hosiery, when compared with other types of knitted articles. It does not make any difference in so far as the character of material used is concerned. The methods are all the same. It would not make any difference in these methods as I have been describing them, whether the goods are of fine or coarse gauge. Defendant's Exhibit 10 is fine gauge. 1046

Mr. Orton: We will adjourn to the Photoart House, 220 Wells Street, for the purpose of displaying a motion picture showing to this witness.

Mr. Hodges: This is objected to since there has been no identification of the alleged picture, and nothing on the record to show by whom taken, or when; and this witness has admitted that he knows nothing about when, how, or by whom the pictures were taken; and he admits that he did not see them taken; and counsel for plaintiff protests against this procedure. Furthermore, there was nothing in the order signed by the Court pertaining to any such exhibition. 1047

Mr. Orton: All right, we will proceed.

1048 *Deposition of J. C. Ruedt. Direct.*

(Thereupon the Commissioner, together with attorneys and the witness, proceeded to the projection room of the Photoart House, 220 Wells Street.)

After adjournment.

Mr. Orton: We are now assembled at the Photoart House Studio, 220 Wells Street, and
1049 for the purpose of displaying, in the presence of the witness, a motion picture showing.

J. C. RUEDT resumed the stand for further direct examination by Mr. Orton and testified as follows:

This is the place on Wells Street near Third, to which I referred in my testimony in the hotel a while ago. This is the place where I saw a motion picture showing in June of 1929. The display of motion pictures I have just witnessed is the same showing I saw in June, 1929. I have observed the methods of repairing runs in hosiery and other fabrics displayed by the showing which I have just
1050 witnessed. They are the same methods which I have testified to as being practiced by the knitters at the Phoenix Hosiery Company prior to 1921. The motion picture showing represents about the same method used by the menders of the Phoenix Hosiery Company as far back as 1910.

I am not related to or identified in any way with any of the parties to this suit. I have no interest in the outcome of the present litigation existing between the parties.

Mr. Orton: Defendant offers in evidence the motion picture film just shown this witness, and asks that it be marked Defendant's Exhibit 12.

Mr. Orton: Direct examination closed.

Thereupon an adjournment was taken to meet again at the Schroeder Hotel.)

After adjournment.

CROSS EXAMINATION BY MR. HODGES: 1052

I did not see the films of the motion pictures which I have just seen, taken. I was not present when they were taken. Those pictures look like Mrs. Converse and Mrs. Pauline Krause Rudy to me. I would not recognize them from their hands. When I was told to go over there, they went along with me and it was understood, that they were Miss Krause and Mrs. Converse. They were there when I saw the picture displayed on the screen at that time. They didn't tell me that they were in the picture—well, they told me that they had been taken there and they were going over there to view 1053 them. That is the substance of my knowledge, that they were the ones of which the pictures were taken.

XQ607. Now what you have testified to here as to the various operations of repairing operators was from what you had heard and seen only, was it? A. Yes, sir.

Mr. Hodges: We note an objection to all of the testimony of this witness in the direct ex-

amination as purely hearsay, in view of this last answer, and move that it be stricken out. Notwithstanding the objection and motion, however, I shall proceed to cross examine, without waiving any rights to the foregoing objection.

The Witness: I never did any repairing for the Phoenix Company except on the machines I worked on. I acquired skill in doing that. I don't know how long it would take me to repair an inch run. I have given no demonstration of that work here today because I am not
1055 used to it. It is ten years since I have done it.

I do not know how good by memory would be for names and dates and facts. I do not know when the Armistice was signed.

XQ616. Do you remember when we had the Sesqui-Centennial celebration in Philadelphia?

Mr. Orton: Objection is taken to this line of questioning on the ground that this witness has not been asked any facts on the direct testimony relative either to the time when the Armistice was signed, or when the Sesqui-
1056 Centennial exhibition took place.

Mr. Hodges: I am only trying to test his memory for dates.

(Testimony taken subject to the objection.)

A. No, I do not.

And yet, I remember all about the year 1910 and what happened.

Well, I came here in 1907 from Chicago to work for the Phoenix Hosiery, and then they just started to make seamless hosiery; and after I worked here about two years, they got in the full fashioned

machine; that is how I remember them dates. I have often been asked when we started the full fashioned machines. They did not have any record of it and they often wondered when they got the first full fashioned machines, and I remember it was about a year or two years after I came here to this concern.

XQ620. And you remember seeing Mrs. Converse and Mrs. Pauline Krause Rudy repairing as you have described back in 1910, do you?

Mr. Orton: Objected to by Mr. Orton on the ground that this witness did not say that he 1058
saw these two particular knitters work in 1910.

(Testimony taken subject to the objection.)

A. No, sir.

I could not tell you the names of the operators I saw knitting in 1910, as I have described. I do not think I could recall the names if my memory was refreshed. I do not think I would remember any of them that long back. I could not tell you either if different ones worked differently. I do not remember which particular method of working I observed first. In the demonstrations I have given here today I have generally operated the 1059
needle forward and back; in the direction of the commencement of the run and back from it.

XQ628. And how many have you seen operating in the repair of hosiery, working over the thumb or finger of one hand?

Mr. Orton: Objected to by Mr. Orton on the ground that this witness has made no such statement in his direct examination.

(Testimony taken subject to the objection.)

A. None; I have not noticed any.

1060 *Deposition of J. C. Ruedt. Cross.*

In the operation of reknitting as I observed it I have noticed the operators turn the needle as they push forward and pull backward. I have seen them doing it all kinds of ways. They have used other hooks, and they used the over-stitching, and all different kinds of ways, in the repair of hosiery. These different ways were different at different times by different persons. No two operated quite alike, and probably no two held their hands just alike. There was no uniformity about the work.

XQ636. How many used the ordinary hook needle
1061 without a latch?

Mr. Orton: Objected to by Mr. Orton in that there is no reference in the direct testimony to any such device.

(Testimony taken subject to the objection.)

A. I could not state how many.

Some of them did and do today yet, just the same as a crochet hook.

XQ639. Did they do any embroidering there? A. Yes.

Mr. Orton: Objected to on the ground this
1062 witness has not been asked any questions about embroidering at the Phoenix Hosiery Company.

(Testimony taken subject to the objection.)

They also did clocking. It was common to use these hoops as shown in Defendant's Exhibit 5 for embroidery work.

XQ642. And it was from that practice, I presume, that they got into pushing this needle, that is to say—

Mr. Orton: That is objected to.

(Testimony taken subject to the objection.)

A. I could not tell you how they got into the practice of using the needle in that way.

XQ643. Was the remending about as slow as the embroidering? A. No, it was faster.

Mr. Orton: This witness has made no statement either on the direct or cross examination as to the speed at which the embroidery was done.

(Testimony taken subject to the objection.)

MR. HODGES:

1064

XQ644. The reknitting was much faster, would you say, or just a little faster? A. You mean faster than it is now?

XQ645. Than the embroidery.

Mr. Orton: Objected to on the ground that this witness has not made any statements whatsoever in his direct examination, and, if counsel for plaintiff persists in this type of cross examination, defendant's attorney will be compelled to direct him not to answer, without an order of the Court.

(Last question read.) 1065

A. No, faster.

In the use of the embroidery hoops, Defendant's Exhibit 5, I did not see them catch or get tangled up with the part of the fabric beneath the hoops as they were going through the top surface. I never knew whether they encountered any difficulty that way or not. The repairing operators were kept constantly at the repairing work. They usually stayed a long time. I have no idea how many stockings

1066 *Deposition of J. C. Ruedt. Cross.*

they would repair a day, on an average. It all depends on the run. I have seen them repair a double run, and also where there were a large number of runs. What they did was precisely what I have described; otherwise where there is more runs, they would run a pin through them, so that when they stretched them it would not run any further.

XQ654. How would it be where the run occurred close to the juncture between the leg portion and the foot, or where the full fashioning occurred, and sometimes a fan shaped run would appear? A. Well,
1067 that would be the same way. They would put in pins to hold the stitches from running while they picked up the other one.

They would repair those all in one direction. They would have to, because the loops were all in the same end. If a break came, as in Defendant's Exhibit 10, and the run continued in both directions, the repair would probably go straight through with that one repairing way up; they would not mend up holes like that. With the run as shown in this exhibit, which seems to continue on through the hole, the repair would go straight on from one extreme end to the other, without any
1068 change. I have observed this. Both of these runs in the fabric after it has left the machine, is due to a break in the thread; it would not be a run; it would be a hole. The run frequently extends in both directions. That is what I was referring to in my last answers.

In finally closing up the hole, if you had to pick a hole, they would sew it up. Where there is a hole, if they mended it up there, they would make a second of it just the same, and if they sewed it up, it was much quicker. When this repair was

done, the stockings were classed as firsts, seconds, thirds, or fourths; it all depends on how it is. The proportion of firsts would depend on the run. If they had a run in there only, and it would look pretty good, they would put it in for a first, that is, providing they did not have to use the threaded needle to sew it up. That would go in for a second, if there is a flaw in that. If there was a fan-shaped run, or three or four alongside of each other, they could not restore those to firsts, probably thirds.

The circumstances which led to my testifying in 1070
this case are that there was someone there, down to our factory—that is, not to our factory—but I was asked down there if I remembered how they used to pick up the runs, and I told them they used to use hoops and cups; and that was the last I heard of it until Mr. Orton probably came up there, but I don't remember who came up there. They were talking about that old practice I saw when I first came there, or soon thereafter. That was about two or three years ago. As to the kind of memory refreshing I had, of course, that has been the practice all the time since I have been working—is that they picked up stitches and tried to repair them so that 1071
you could pass them in for first class, if possible.

I do not agree that most of these practices that I have described were used only a short time back in 1910. I know they used to use, the biggest part —of course, every time a needle broke in a machine, and they had a machine, they would sew it up on the machine: but in the knitting room we used hoops, and they discarded the hoops and used cups, and used different things. I don't know what else they used. Some used cups, and they are using them now—cups.

1072 I have only been in the full fashioned rib department during the last five years. At that time it was not in the same building where the repair work is done. We didn't have none at that time. Now it is in a different building. We have nine buildings around here in the city. In 1910 it was all done in the same building. The factory was in two buildings combined, that is, connected.

Where I have been the last five years, repair work is going on, but does not come under my department. It is in the same buildings. I feel quite sure
1073 the first full fashioned machines were put in in 1910. I had never seen that kind of work before, but I had heard of it.

I have observed no change made in the needle, Defendant's Exhibit 11, for this repair work, since I have been with the Phoenix Company. Probably the needle was larger in 1910, and probably the latch was a little longer than what it is, the latch on the pivot; the pivot latch was a little longer. It did not project quite a little distance over the hook. The pivotal point was farther back from the hook. The reason for that is that the work used to be coarser than it is and you could use a little larger
1074 needle. That change has been going on right along; they are still changing, and they are still smaller than those. I could not say when this needle, Defendant's Exhibit 11, was purchased. I do not know whether this particular needle has ever been used for repair work. That needle has not been used in a machine. They used that size and style of needle in the machines, without variation as to size or length of latch, or size of hook. That is a machine needle.

I know Mr. Busek. I have known him since about 1909; he came there before the full fashions came there; about a year before that.

XQ711. Have you ever heard of the Stelos needle and system? A. No, sir.

XQ712. You have never seen—

Mr. Orton (Interrupting): Objection will be raised to any question asked this witness in connection with the so-called Stelos method or system, as no questions were asked, or evidence given, in the direct examination on any such system or method. 1076

(Testimony taken subject to the objection.)

MR. HODGES:

XQ713. Did you ever hear of the Stephens patent?

Mr. Orton: Same objection.

(Testimony taken subject to the objection.)

A. No, I do not know what that is.

MR. HODGES: 1077

XQ714. In talking to you before testifying, what explanation was made to you about the purpose of your testimony?

Mr. Orton: Objected to in that it is no part of the direct examination.

(Testimony taken subject to the objection.)

A. There was nothing said except that I was to come here and testify that I had seen this method of mending stockings and picking up stitches.

MR. HODGES:

XQ715. In a previous answer you said they sometimes used hook needles in repair work. A. Yes, sir.

XQ716. Would the operator use both the hook needle and the latch needle?

Mr. Orton: Objected to, as this is no part of the direct testimony, as to any use by an ordinary hook needle.

1079 (Testimony taken subject to the objection.)

A. Some girls used two of them, the hook and the latch.

MR. HODGES:

XQ717. And a good many of them used the hook needle, did they? A. I do not know how many, but I know of one in particular who used the hook and she also used the needle.

XQ718. Did you observe others using the plain hook needle?

1080 Mr. Orton: Same objection.
(Testimony taken subject to the objection.)

A. No, I have not.

MR. HODGES:

XQ719. Then you only observed one using the hook needle? A. That happened to be one in the same building I am working in, that I seen her use the hook, and I believe there is others using it.

XQ720. In using the plain hook needle, did they make some kind of a stroke?

Mr. Orton: Same objection.

(Testimony taken subject to the objection.)

A. No.

Mr. Orton: This witness has not testified as to any operation with a plain hook needle.

(Testimony taken subject to the objection.)

1082

It is not the common practice for visitors to frequent the repair room. They are excluded.

I first received this needle, Defendant's Exhibit 11, about a week ago, from the underwear department. I was asked to get a couple of them for a friend of mine, and I got a few of them for him, for mending up; I gave him a couple of them. The friend was Rudolph King.

REDIRECT EXAMINATION BY MR. ORTON:

1083

When I said on cross examination that the needle worked forward and back in the direction of the run. I meant forward and back towards the drop stitches.

What I meant to say is that you go forward with it. As you go along, you go up with it. As you take up the drop stitches, you travel along with it and pick up the stitches as you go along, and travel forward with the needle. The whole needle went in the direction of the run. I did not mean that the needle was pointed along the length of the run.

RDQ737. You have been questioned about the exclusion of visitors at the Phoenix plant. Should

any visitor go to the office, and properly identify himself, and give the management any reason why he should inspect the plant, would such permission ordinarily be refused?

Mr. Hodges: Objected to as leading.
(Testimony taken subject to the objection.)

A. No.

MR. ORTON:

1085 RDQ738. Then visitors do go through the plant, do they not? A. Yes they do.

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

MR. ORTON:

RDQ739. And there is no particular policy on the part of the Phoenix Company, is there, to keep any of their methods secret?

Mr. Hodges: Same objection.
1086 (Testimony taken subject to the objection.)

A. No.

They are allowed to go through, if they are identified properly, but anybody they do not know, or even know their identification, of course, they cannot go through. We often have students come through there sometimes three or four times a month, from different universities or different schools. These students have been permitted to go through the plant for years that I know of. They

were admitted as far back as 1910. They were always invited to come up.

RDQ744. Were these students permitted in the repair department? A. We took them all over the whole place.

Mr. Hodges: Objected to as leading.
(Testimony taken subject to the objection.)

These students were permitted to enter the seaming room, mending room, and boarding, and looping, and in all departments; there was no special department that they came in there. 1088

RDQ746. Was any effort made to prevent these students, or other outsiders, from seeing the methods which you have testified to in connection today? A. No, sir.

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

I don't remember whether I was present in the mending rooms at any time prior to 1921, when these students and other outsiders were passing through.

RDQ749. Prior to 1921 did you ever see any 1089 visitors in the mending department at the time—

Mr. Hodges (Interrupting): Same objection.
Mr. Gilligan: He said he cannot remember.

Q. (Continuing) —these repairing operations were being performed?

Mr. Hodges: Objection repeated.
(Testimony taken subject to the objection.)

A. I have not known of any visitor around in the mending room.

MR. ORTON:

RDQ750. But you have no reason to believe that they were excluded from the mending room, have you?

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

1091 A. No, sir, I do not believe they were at any time.

MR. ORTON:

RDQ751. In general, then, such visitors were permitted free access to all departments? A. Yes, sir, with a guide.

Mr. Hodges: Objection repeated.
(Testimony taken subject to the objection.)

These guides showed them around—he showed them around the different operations, knitting and
1092 all that sort. The guide explained what was taking place in these different departments.

RECROSS EXAMINATION BY MR. HODGES:

I never saw any of the operators working the needle toward their bodies. I have seen them operating right in the line of the run—on the angle with the needle, but right over the run and parallel with the run.

RXQ759. About how often do you now go in the mending department?

Mr. Orton: I think I must object to any further questioning unless it relates to what I have asked on the redirect examination.

(Testimony taken subject to the objection.)

A. About once every week.

I cannot positively say or swear that I have been in the mending department back in 1910, and about that time, when guides have brought visitors through there.

Deposition closed.

1094

MAY DELEBECK, of the City and County of Milwaukee and State of Wisconsin, residing more than one hundred miles from the place where the trial of this action will occur, and being a witness mentioned in said order to take depositions and a witness called on behalf of the defendant herein, being duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, and being carefully examined, deposes and says, in answer to interrogatories propounded to her by Mr. Orton as follows:

1095

Mr. Hodges: We object to any testimony by this witness on the ground that she was not named in the order.

By Mr. Orton: This is a newly discovered witness, who was not known to defendant prior to last Monday.

Mr. Gilligan: What date was that, the 14th or the 21st?

Mr. Orton: April 21, 1930; and she is produced under the clause in the notice of April

16, 1930, which notices that, perhaps, other witnesses will be produced at this time and place.

(Testimony taken subject to the objection.)

1096 My name is May Delebek: I reside at 3940 Parker Avenue in Milwaukee, Wisconsin; I am over 21; occupation, forelady, employed by Phoenix Hosiery Company. I first came to the Phoenix Hosiery Company in November, 1913. My first duties with them were putting fringes on mufflers. Prior to 1913, I was employed by Gimbel Brothers, at Milwaukee. My position there was cashier.

1097 While I was employed at Gimbel Bros. I frequently had runs in my stockings. The stockings I used about that time were a heavy grade of silk. Stockings now are more sheer; that is the only difference. They are thinner, of lighter weight.

Prior to 1913, I chummed with a girl who had a sister that worked at the Phoenix, and she was a string knitter, and she showed me how to do this. She knitted ladies' hose. It was seamless, she was knitting, and I wore seamless and full fashioned. Runs occurred in both seamless and full fashioned hose such as I was wearing at that time. The name of the person who taught me to repair runs in hose

1098 at that time is now Mrs. Frank Kohbert. She was not married at the time she taught me how to repair runs in hosiery. Her name at that time was Hanna Zoschke. She is now living, but is a total invalid. She has had a paralytic stroke. She would not now be able to demonstrate how she taught me to repair runs in hosiery prior to November, 1913.

I did not become expert in repairing runs in hosiery because I never cared enough about it. I did it with my own personal hose. We now get our

hose too cheap to personally repair the runs. I am now out of practice in the repairing of runs in hosiery or fabric. I think I could show you, in a crude way, how I repaired runs in my hosiery prior to November, 1913. I have nothing to make such a demonstration with but what Mr. Busek left here.

Mr. Orton: Witness picks up the seamless fabric, Defendant's Exhibit 8, and the pivoted latch needle, Defendant's Exhibit 4.

I will now get you to hold the parts which you have picked up in the position in which you held 1100
parts corresponding to these parts prior to November, 1913; and, having done that, I will ask you to describe the position of your left hand. In what position is your hand; how is it arranged?

It is flat, isn't it; it is open. The position of the thumb with reference to the other fingers is straight up as far as I can see. It extends in the opposite direction to the fingers,—well, almost. I do not know how I can have it; I can have it this way (illustrating), and it will extend the same as my fingers.

Q43. Hold your hand in the position in which you held it prior to 1913, when you say that you re- 1101
paired runs in your own stockings, and please hold your hand in that position; and, so holding your hand in that position, kindly explain just how the hand is positioned, making reference to the position of the fingers and the thumb, and how they extend with relation to each other. A. Well, I do not know what you would say about it.

Q44. Suppose we remove the fabric which you have in your hand, and I will now get you to hold your hand in the position indicated, but without the fabric. A. About like this (illustrating).

1102 *Deposition of May Delebeck. Direct.*

The position I am holding my hand is sort of bowl-shaped.

Q48. Now restore the fabric, Exhibit 8, on your hand as you are so holding it in a bowl-shaped. A. (Witness indicates as requested).

I have it now in the position in which I held my stocking in 1913. I do not know how else I could work on it if I did not.

Q51. I will now ask you to produce a run in that fabric which you hold in your hand, so that it will resemble the run which occurred in your own stock-
1103 ings at this time. A. (Witness produces run as requested).

Q53. Where is the run positioned with reference to your hand; in what part of the hand is the run disposed? A. This way I have latched it up, this was latched up towards me.

Mr. Orton: Witness reverses the position of the fabric so that her fingers point toward the body and has now reversed the position of her hand in its original position, with the fingers extending away from the body.

The reversal in movement of my hands was made
1104 because I can do it either way. I wanted to show that it does not make any difference which way the run extends with reference to my own body. As I hold the fabric in my hand, at present, the run, with reference to the hand which is inserted in the fabric is between my little finger and the thumb, about half way, I think. With reference to my own body, the run extends away from me. The effect on the fabric distending the fingers into bowl shape is, I had to have a hollow place under the drop stitch, in order to pick it up, in order to get the needle in action. For one thing, this exposed the run. The

1105

run is below the plane defining the top of my thumb and little finger.

Q65. I will now get you to position the needle Defendant's Exhibit 4, which you hold in your right hand, and ask you to hold the needle exactly in the position in which you held the needle when you made the repairs of your hose in 1913. A. You can go that way or this way (witness illustrating); it don't make any difference, as long as I get in there and pick up the stitch.

Describing the position of the needle as it is in my hand, as if I were about to start, the hook is downward, and the latch open, ready to pick up the first loop. I am holding the needle with my thumb, my first finger, my three fingers, with the exception of the little finger. The thumb is on one side; the fingers that engage it are on the other. The position of the needle with reference to the run is on the bias, on a slant to the run; the hook of the needle is about to engage the run.

1106

I put the hook in the first loop, and then I have to turn the hook around. Having turned the hook around, the needle is facing the run. The end of the needle in my hand is nearer my body than it was before I engaged the first loop. The butt of the needle which I hold in my hand is away from the body. I am positive of that. The end I hold in my hand is nearer the body than I had it before and extends from my body to the run. The needle as I am now holding it is facing the run, extending in the direction of the run. The needle is not flat against the fabric. It extends in the direction of the run.

1107

As I am looking at the needle, the hook end is in the run. The rear or butt end of the needle is in the line with the run. My thumb is on the left side

1108 *Deposition of May Delebeck. Direct.*

of the needle. The end of the thumb is in line with the run. The needle is on the right side of the thumb.

Q95. Then both the needle and the end of the thumb are in line with the run?

Mr. Hodges: Objected to as leading.
(Testimony taken subject to the objection.)

A. Yes, sir.

The hook end of the needle is parallel to the end of the thumb. The hook end of the needle is ahead
1109 of my thumb. The butt end of the needle is to the right of my thumb. The first knuckle of my second finger touches the material. It is parallel to the run, only to the right of it. The end of my first finger which engages the right side of the needle is the same, only it is not touching the material. The two ends of my fingers are not in the same place. The tip of my index finger is parallel, running in the same direction as the run. My fingers extend in the same direction as the run. If my fingers were longer they would run through the run. If the index finger was extended it would not go through the run because the run is above it.
1110 The run is also above the end of my second finger.

The fabric I hold is what is commonly known as a ribbed fabric. In producing the run, I produced it along one of the ribs. The pointed end of the needle is in engagement with the run, which is an unlatched rib. In looking at the butt end of the needle and through to the fabric, I can see the fabric, a part of which is unraveled. The rib which is just back of the butt end of the needle is the same rib that was partially unraveled.

In describing the first operation as I performed it in 1913, I put it through the loop, all the way

1111

through, and I see that the latch stays open to pick up that first stitch. When I get it in this hook, the latch closes; the loop I put in through forces it closed. Then I bring it through, and I make one chain there, or loop. Then I start it over again, and then I bring it back the same way. The last loop closes the latch.

Q120. For the purpose of clearness, suppose that we identify that first loop which you engaged by the number "one" and the loop which you formed as loop number two. Using these numbers, kindly describe what you did.

1112

We will call this number one (indicating). I put the hook through loop number one, the latch also; then I bring it back; but the latch comes between the loop and the first stitch. Then I bring it up.

When I bring it through, the latch closes. Loop number one closes the latch. Now it is closed. Now I will bring that stitch through loop number one. I brought number two through number one. That made another chain in the loop; and then I put it through between the—I put the needle down between the loop and the first—that would be stitch number two. I am holding the needle in a position to pick up the next stitch; that would be stitch number three. I have stitch number three in the hook, and the latch is closed. The hook end is now above the fabric. Now I am about to bring it through loop number two. After I get it through there, then I pull it and make a chain of it. In 1913, after I formed one loop, I went after the next one, and continued it until the run was latched up. In regard to this hose, when I get to the top I draw a thread through it and fasten it, to prevent it from running. If I did not put a thread through the last loop it would run right down again.

1113

1114 *Deposition of May Delebeck. Cross.*

After I first started this operation of relooping runs in my stockings sometime prior to November, 1913, I did not continue it very often. I have not done it in probably three years. When you work all day you do not feel like going home and latching up stockings that you can get for 70 cents.

Q141. Was the method which you have just described the same method which you say was taught you by Mrs. Frank Kohbert?

Mr. Hodges: Objected to as leading.

1115 (Testimony taken subject to the objection.)

A. Yes, sir.

I do not know of any other method than the one I have just described, which was taught me by Mrs. Frank Kohbert.

Mr. Hodges: Without waiving the objection to this witness recorded at the commencement of her testimony, we will proceed to cross examine.

Cross Examination by Mr. Hodges:

1116 XQ143. Miss Delebeck, will you take that same fabric with which you were demonstrating, on the same run, repeat what you have done before on Defendant's Exhibit 8. Will you kindly do that, Miss Delebeck? A. Yes, sir.

XQ144. Hold your hands just as you did before, if you please. Just repeat exactly as you did before.

I put the hook through the last loop, if it is possible, the last loop—the one nearest me; and then I bring the needle back, and pull that first stitch

through loop number one. Then I pull this loop a little bit, or the stitch, toward me. Then I put in the hook, or the latch, rather, through—that would be loop number two—and I bring it back; the latch is between loop number two and the first stitch, and the hook will be between stitch number one and number two. I draw that through as before. Then I put the hook through loop number three, bring through stitch number four; then I bring that through the loop; then I put the latch through loop number four, and bring through stitch number five; then I bring—then I must open the latch. In open- 1118
ing the latch, the hook end is toward the run and over two or three threads beyond, right now, because I am not working on it; when I work on it it will have to go through there. I now have it one stitch beyond the loop, on top of the fabric. I did that for exhibition purposes.

XQ156. Isn't it to get your loop back over the latch? A. Well, here is where it belongs (indicating).

XQ157. That was to open the latch? A. The latch is open.

XQ158. Now push it on the way you did. A. Then I push it through.

XQ159. You pulled it back and pushed it 1119
through? A. Yes, sir.

Then I get the latch through the loop. Then I bring it back between this loop and the stitch (witness illustrates). Then I bring it back, and the last loop forces the latch to close. And the latch is closed; then I bring it through the loop.

XQ163. Now will you make one more. Wait. Push it as far as you had it. Wait. Don't go down. No. Where you had it. Go ahead and finish this loop.

XQ164. Put it in there just as you say you did it, or were taught to do it.

XQ165. You just went over several threads, did you not? A. Yes, sir.

Mr. Orton: It is noted that at this point the witness is apparently having difficulty in forming the loops.

This material is of four strands. In taking the next thread I did go over a little bit.

XQ169. You have gone over four or five threads
1121 from the top, have you not? A. You cannot prevent that.

XQ170. You do that most all the time, do you not? A. In this material.

Mr. Orton: It is noted that at the termination of this demonstration, and, apparently due to the nervousness of the witness, the pointed end of the needle seemed to be wobbling about considerably.

I was and I am nervous. I was not nervous during the whole examination by Mr. Orton. Holding
1122 my arms up so long, I guess, makes me nervous. I did reknit the run just exactly as I did for Mr. Orton, only I had a little trouble missing the stitches, because this is made of four strands. I do not recall that I had trouble in the same way in my demonstration with Mr. Orton.

XQ180. Will you pick out from these several stockings which I hand you any one that comes nearest the sheer stockings that you have repaired, and take that, and make a run, and give me a demonstration of the way you say you were taught, and you have done, the work.

Mr. Orton: The witness is apparently about to be asked to perform an operation on a stocking which was not used in the direct examination, and objection is taken to any questions relating to the stocking which Mr. Hodges has just handed the witness on the ground that it is not proper cross examination.

Mr. Orton: I have just examined the three stockings which have been handed the witness for selection, and there is no evidence in the direct testimony that the witness is in any way familiar with the type of stockings illustrated 1124
by the three handed the witness by Mr. Hodges.

(Testimony taken subject to the objection.)

MR. HODGES:

XQ181. Are you familiar with any of these grades of stockings that I have shown you—any of these three?

Mr. Orton: Objection that it is not proper direct examination.

(Testimony taken subject to the objection.)

MR. HODGES: 1125

XQ182. Will you answer, please? A. In what way do you mean?

XQ183. In the matter of thinness, fineness of thread, sheerness, quality, and the like.

Mr. Orton: This witness was not examined as to the character of stockings which are in use at the present time. She was simply examined on the character of stockings which she said she repaired prior to 1913, and there is

1126 *Deposition of May Delebeck. Cross.*

nothing here present to show that any of the three stockings submitted by Mr. Hodges resembled or differed from the stockings in connection with which this witness testified.

(Testimony taken subject to the objection.)

A. I guess so.

XQ184. Will you pick out any one for the demonstration that resembles, in the qualities I have mentioned in my last question, the hosiery you said you had repaired prior to 1913, and make a run,
1127 and reknit it for me. A. This is the closest, but this is not as heavy as I worked on. This is a light tan; caramel shade I guess: dust tan. I cannot use this needle for this.

Mr. Orton: Referring to Exhibit 4.

Mr. Hodges:

XQ186. You may use either Exhibit 4 or Exhibit 11. A. Will you give me that glass, please? This one here I could use? (Referring to Exhibit 4.)

XQ187. I wish you would do it as you did before, over your hand, as you said you were taught. A.
1128 This is not a good needle.

XQ188. Will you explain every motion you make, as before. A. Well, it is the same thing over again.

Mr. Orton: It is noted that the witness, in her efforts to comply with Mr. Hodges' request, abandoned the needle, Defendant's Exhibit 11, and searched about the table for a different form of needle. Not being able to find any such suitable form of needle to operate on the sheer fabric which she holds in her hand, she has gone back and picked up Defendant's Ex-

hibit 11, and is apparently endeavoring to reloop the run in the sheer stocking which is on her hand, and which stocking was handed her by Mr. Hodges.

I will have to catch the last loop. I have the hook in the last loop; I push it through the fabric, latch the loop, then I bring it back and catch the last stitch.

XQ192. Please do it as you have been doing it, and as you did it for Mr. Orton with the coarser fabric. A. (Witness demonstrates).

XQ193. Now, just before you go in again to catch 1130
the next thread, you pull your needle out with a loop in the hook, and push it over several threads in advance, do you not? A. Yes, sir.

XQ194. On top of the fabric, is that right? A. The latch covers up—just the latch. (Witness demonstrates.)

XQ197. Now you go forward before you go in again? A. Yes, sir.

XQ198. And why do you do that, in order to open the latch? You are now going over several? A. Yes, sir.

XQ199. Why do you do that? A. Because I am going slow, I suppose. 1131

XQ200. Well, go faster now.

Mr. Orton: It was no part of the examination of this witness in the direct testimony to dictate to her whether she should go slow or fast; and the witness is obviously being directed to perform an operation different from the operation which she performed during her demonstration in the taking of the direct testimony.

1132 Mr. Hodges: Counsel objects to that statement, which is not true. The witness has been asked repeatedly to do this precisely as she was taught, and testified she had done prior to 1913.

Mr. Orton: There is no testimony that she worked on any such fabric, and it is the obvious purpose of this cross examination to have the witness describe an operation which could not possibly have been performed with the particular needle which she holds in her
1133 hand when operating on a coarser fabric, and which coarser fabric was the type of fabric which she testified in her direct examination was the type of fabric used by her in 1913 in making these relooping operations.

(Testimony taken subject to the objection.)

MR. HODGES:

XQ201. Will you now describe each movement that you made, omitting nothing? A. Shall I go back to the loop again?

XQ202. You can start right there now,— A. All right.

1134 XQ. (Continuing)—where you have your needle with relation to the other threads. A. The threads are the run—down.

XQ203. The run-down? A. Well, it is parallel.

XQ204. And is it over several threads? A. Right now, here it is (indicating). Now I have that loop between the latch and the hook.

MR. HODGES:

XQ205. Now you moved it again. Now where is it? A. It is right over the latch, right over the left side of the latch.

XQ206. Where is your hook with respect to the run?. A. It is about four or five stitches above.

XQ207. Over the surface? A. Yes, sir.

XQ208. And that is the way you have been doing it? A. Right now, to show you.

Mr. Gilligan: That is the way you did it for Mr. Orton?

A. Well, watch me then. (Witness again demonstrates.)

MR. HODGES: 1136

XQ209. The way you have done it this morning? A. Well, isn't that the same?

XQ210. Yes. Please do it the way you are used to doing it, the way you did it today.

Mr. Gilligan: Be sure to catch the first thread.

A. Yes, sir. I have the loop between the latch and the hook.

MR. HODGES: 1137

XQ211. Now, hold it still. Where is your hook now? A. (Witness demonstrates.)

XQ212. You are pulling it back; but where was it with relation to three or four or five cross threads ahead of the run; is it over? A. Well, it is over; it is over the last stitch, if that is what you mean.

XQ213. Count how many are under it. You pulled it back. A. Four or five.

XQ214. Is that the way you have repaired stockings in the past? A. That is the way.

1138 Mr. Orton: Objected to because this witness has not been examined as to the method that she has used at all times. She was simply examined in connection with the methods which she used during 1913, and prior to that time.

I am holding my left hand on a slant, with my fingers and thumb spread, and I am working towards my index finger, which is just ahead of me. I am holding my needle about on a level with the fabric. My index finger is right under the run just ahead of my needle. In case of two or three runs
1139 I would operate the same way; take one at a time, and then I would put a thread in the top, and start the next one.

In starting you always throw the handle of your hook away from you, with the hook down and toward you, and insert it downwardly into the last loop. I did not repair stockings where there were three or four runs in them.

In my direct examination, I referred to holding my hand in the opposite direction, with my finger tips toward me, because if you cut the foot off of this, and I put my hand in there that way, I will do the same thing. (Witness illustrating.) I
1140 will hold it the same way, as far as that is concerned, but I cannot get in here. You have got your foot on here. That material was open on both ends. Prior to 1913 I sometimes turned my hand in the opposite direction, with the finger tips toward me, but that was on coarse material.

XQ232. Will you give us a demonstration on Defendant's Exhibit No. 8 of how you saw that done at that time, or you did it? A. May I use this needle?

Mr. Gilligan: Either of the needles.
(Witness demonstrates.)

MR. HODGES:

XQ233. In doing that, you are simply working towards you, and doing just as you did before, are you not? A. Yes.

Mr. Orton: Objection is raised to this question on the ground that the reference to "what you have done before" is indefinite, in that this witness has demonstrated more than one operation heretofore. 1142
(Testimony taken subject to the objection.)
(Witness demonstrates.)

XQ235. All right. Now faster.

Mr. Orton: Objection is taken to Mr. Hodges dictating to this witness as to the speed of operation. No reference was made in the direct testimony as to any speed of operation, and the witness was permitted to perform the operation as she saw fit.
(Testimony taken subject to the objection.) 1143

In the formation of each loop, whenever it is going down, that is one motion; going back is two. In one motion, I go over the top two or three threads. I think I would do that just the same if I was operating away from me as I did on this same exhibit when Mr. Orton examined me. I will say they are all the same.

Mr. Hodges: I am going to offer this stocking of sheer tan on which the witness operated, for identification, as Plaintiff's Exhibit S.

1144 *Deposition of May Delebeck. Redirect.*

REDIRECT EXAMINATION BY MR. ORTON:

The fabric on which I worked prior to 1913, was heavier than Plaintiff's Exhibit S. If I am not mistaken, it was—I cannot remember how many threads were in it, but it was a heavy stocking; but I am sure I could do it just as well on this. I think on this one I have been working on, it would latch up about the same. I think the threads were spaced about the same as this. In looking at Plaintiff's Exhibit S, I would say there are about 32
1145 threads to an inch. In Defendant's Exhibit 8, there are 12 or 13 threads to an inch. There are a greater number of threads on the fine fabric Plaintiff's Exhibit S, than on the coarse. On the fine fabric there are 32 cross threads to the inch and on the coarse fabric, there are 12 or 13 such cross threads. That would mean that if you put 32 threads to the inch in one case and 12 or 13 in the other, in the fine fabric where you have the 32 threads, they must necessarily be closely positioned.

In my cross examination I said "This is not a good needle", because it stuck to the fabric. That was because it is new, probably. They are packed in oil when they come—and a little factory dust on
1146 them.

In repairing fabrics of different degrees of fineness or coarseness it is customary to use different sized latch needles. Back in 1913, we had fabrics as fine as Plaintiff's Exhibit S. I think we repaired fabrics that fine, as far back as 1913. It is pretty hard to say whether I used a latch needle as coarse as a latch needle I have been using in demonstrating for Mr. Hodges.

At the time I latched and relooped a fabric, in 1913, as fine as the fabric Mr. Hodges showed me,

the latch of the needle I used was probably a little shorter than the latch in Defendant's Exhibits 4 and 11, but it does not make much difference. To be frank with you, I don't think I ever paid any attention to the latches—except they are about like this (indicating Defendant's Exhibit 11)—the same length. I hardly think that I have used a shorter latch.

RDQ264. I will get you to replace Defendant's Exhibit 8 on your hand, in the same position you held it while I was directly examining you this morning, and I will get you to take Defendant's 1148
Exhibit 4, and start the operation which you have done previously during your direct examination, and following that procedure which you say you did prior to 1913, make the first loop. A. Yes, sir, I have it here.

I have made the first loop. I now reach for the thread to make the second loop. The needle does not extend beyond the stitch I have just taken in the hook end of the needle. That is in the hook now. It does not extend over the threads which form the balance of the run. It does not extend over any of these threads. In the operation I performed for Mr. Hodges, I apparently extended over 1149
three or four threads because I had to pause and wait.

MR. GILLIGAN:

Q271. You also extended it over this particular Exhibit 8 in the same way as you did over this Plaintiff's Exhibit 8? A. I will do that when I bring it through here, you see (indicating). Then I will go, you see, this way. Then I have to.

MR. HODGES:

Q272. You have to do it? A. If I want to loop on here, in order to get my latch through it.

This is identically the same thing I was showing on my direct examination when I was demonstrating for you. I am positive of that. I don't see any difference.

I now position the needle in the position in which I have just caught the advanced thread. I now pull it through the loop. The hook end of the
1151 needle is now above the fabric. In continuing the operation for the purpose of opening the latch, I bring the loop back and open the latch.

The latch is closed like this, and in order to open the latch, I have to bring the loop back. With respect to the threads in advance, the loop is between the latch and the hook.

When reaching for the next advanced thread, the hook end of the needle is below the fabric. As I pull through the loop, the hook end of the needle is above the fabric. I go from a position above the fabric to a position below the fabric, and each of these movements forms a loop. My hand is pumping up and down.

1152 The loop that is on top of the needle closes the latch. The loop opens the latch as I am moving downwards.

RDQ294. When you move downward, is the hook of the needle always above or does it sometimes extend beneath the run? A. (Witness demonstrates.)

RDQ295. Now come back; close the loop. A. (Witness demonstrates.)

RDQ296. I notice that as you are now performing the operation, the end of the needle is above

the run when you are opening the latch; and I am questioning whether the end of the needle is always above the run when you are opening the latch. A. Do you mean this end here?

RDQ297. The hook end. A. The hook end is below the material.

RDQ298. It is now, but as it opens the latch, is it always below the material? A. Not always, no.

RDQ299. Sometimes it is above, and sometimes below? A. Yes; you can see that.

RECROSS EXAMINATION BY MR. HODGES: 1154

RXQ300. You invariably push the hook of your needle over several threads, do you not, in order to get your latch turned back and open? A. To make a bigger loop; that is what that is for.

RXQ301. As you are working now? A. I bring it back to make a bigger loop, you see. (Witness illustrating.)

I push the hook over these threads ahead of me. I always do that. I did that in working on Plaintiff's Exhibit S, just as I am doing now. On this coarse fabric I would say I am running over about four threads. 1155

I was not more nervous in these last operations and demonstrations than I was under Mr. Orton's examination but my arms were getting tired. I was doing it just as I have all day.

RE-REDIRECT EXAMINATION BY MR. ORTON:

While I have been operating in the last few minutes I was a little nervous.

RRDQ309. I will now get you, with the approximate position you have held it before, to make a

couple of reloop stitches, as you have shown before.

(Witness Demonstrates.)

I know the loop closes the latch as I bring it through. This time I crossed one stitch in advance of the loop, in closing the latch. This was a less number than I crossed heretofore, but this time the loop is not so big. The number of threads I cross depends on the size of the loop I am intend-
1157 ing to form. In forming the smallest possible loop that could be formed, I cross one thread. When in the act of closing the latch sometimes the hook end of the needle is above the run. Sometimes it is above and sometimes below. The latch can be closed when the latch and hook end are below the fabric.

RE-RECROSS EXAMINATION BY MR. HODGES:

RRXQ323. But when you open the latch, you pass your hook far enough over the run in advance of a length equal to the distance between the hook and the end of the latch, don't you? Do you see
1158 what I mean? Now get the question, please. Now go over it, as you did. A. Like that? (Witness demonstrates.)

RRXQ324. Yes. Now isn't that length equal to the length of the needle from the hook to the end of the open latch? A. Well, let me see. I could not get any farther than that. (Indicating.)

RRXQ325. You go on until the thread passes over the end of the latch, do you not, over the thread, is that right? Can you answer that question? A. I do not know just what you mean.

RRXQ326. I mean with each cycle of movement, in order to get a thread or loop back over the latch, you push your needle forward over the run in advance a distance equal to the length of the needle from the hook to the end of the open latch, do you not? A. Very nearly.

Deposition closed.

MRS. HELEN LUELL, of the City and County of Milwaukee and State of Wisconsin, residing more 1160
than one hundred miles from the place where the trial of this action will occur, and being a witness mentioned in said order to take depositions and a witness called on behalf of the defendant herein, being duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, and being carefully examined, deposes and says, in answer to interrogatories propounded to her by Mr. Orton as follows:

Mr. Orton: This is a newly discovered witness, unknown to the defendant until last Tuesday, April 22, 1930, and is produced under 1161
the provision of the notice which refers to the fact that other witnesses may be produced at this time and place.

Mr. Hodges: Same objection as before to calling witnesses not named in the order signed by the Court, and as recorded February 21, 1930.

My name is Mrs. Helen Luell; I am of legal age; I reside in Milwaukee, Wisconsin, at 444 Twenty-fifth Avenue. My present occupation is employ-

ment manager of Phoenix Hosiery Company, located at 235 Milwaukee Street, Milwaukee, Wisconsin.

I first came to the Phoenix Hosiery Company in 1893. I graduated from the eighth grade in 1893, and went to work for them in vacation time; probably in June. I was first put to work on knitting. I was put on a Lamb machine, and we were put on knitting mittens, and I knit single mittens of wool yarn. These mittens were made of knitted fabric; they were knit different sizes. At that time,
1163 in addition to mittens, the Phoenix Hosiery Company made leggings and gloves, and caps and scarfs. All these were knitted goods. At that time they made stockings for, I think it was an ad of some kind; we made little bits of stockings, but not as a general thing. The leggings were almost like stockings. Stockings as they exist at present were not made by the Phoenix Company. I do not know when they first started to make stockings.

I quit in 1906, I was married; and I came back in—I am not sure whether it was 1915 or 1916. When I came back there they were knitting stockings. I do not think they were knitting stockings when I left there, only these little bits of stockings
1164 that were made for the Fair. We made those in 1893. They were too small to be worn. They were hose for dolls.

The mittens that were made in 1893 were made on a Lamb machine. They are similar to our full fashioned machine. The needle is a little different. These mittens were made at the time in a flat form and sewed afterwards. While these mitten parts of fabric were mounted on the Lam machine, runs sometimes formed. Every girl that knew how to knit had to know how to mend. When a run

occurred in the mitten fabric while positioned in the machine, most of the time they would mend after the mitten was out of the machine. They were sometimes mended while in the machine.

When a run occurred, with the mitten blank on the machine, we would take one of the needles and put it into the mitten and work the stitch up to the needle where the stitch belonged; right wherever the run was; and then work it up until the stitch came to the needle, where it belonged, and put the last stitch back on the needle. In doing this, we used one of the needles of the machine, the latch 1166
needle. One of those needles has a hook and latch and this latch is fitted with a little pivot.

Mr. Orton: The witness is at present holding in her hand Defendant's Exhibit 4.

This was the kind of needle which was used at that time to reloop the run when positioned on the machine, and I did that. To do it, you put your hook on the needle—I held the mitten over the left hand, so that you could get the mitten stitched. I held the mitten fabric over so that I would have a space there to get the needle in, as I exposed the run. I first put the needle into the loop, and then 1167
put the loop over the latch, to get the next stitch pulled through, to work that stitch this way (Indicating). That is with an up and down movement. The mitten fabric extended vertically, with reference to the table top. The goods would be into the machine this way (Indicating). The goods were extending vertically and with the run over on this side; I would hold it this way so that I would get my stitch up. The fabric was hanging over the machine vertically, and I held the needle between my-

self and the fabric, and punched through the fabric. Everyone that knew how to knit had to know how to mend.

These Lamb machines were equipped with pivoted latch needles such as this, of different gauges; some were fine and some were coarse. Which they would use, depended on the material you are supposed to knit. Fine gauge needles knit finer yarn. Some knit silk, and some were the finer grades of wool yarn. The coarser needles were used to form mostly worsted and cotton.

1169 In making these repairs, I took one of the needles which was intended to be mounted in the machine, and used that to repair the run. Some girls put handles on, but it was not required. I also repaired runs in mittens after they were taken off the machine. It was the more usual practice to repair runs in mittens, at that time, after they were off the machine.

In repairing runs in mittens after they were removed from the machine, I held a mitten over my hand between the first finger and the thumb, as I am holding it now. The thumb and fingers are held in a cup shape and then you hold your needle in this way (illustrating). The thumb of my left hand is 1170 near me and the fingers are away from me, and there is a space between the thumb and first finger, room for the needle. I can produce one of the mittens such as I repaired in 1893. I have a glove which was made at that time. I do not know whether it was made exactly at that time, but it was made between 1906 and 1893.

Mr. Orton: The witness produces a glove. Defendant offers in evidence the glove produced by the witness, and asks that it be marked Defendant's Exhibit 13.

In repairing the mitten, you would put it over your hand to form a space when you put your needle in, so that you can mend it, and that there is room, that nothing else will interfere. The run is from the empty space between the thumb and first finger. I put it in that position so that I could mend it. In mending it, it was necessary to have a space under the run.

Q83. I will now ask you to take Defendant's Exhibit 4, and position the needle in that position where you held it in 1893, and start the operation of repairing the run; and, with it held in that position, please explain where the needle is with reference to the run. A. The needle is put into the loop, with the loop above the latch, and ready to take the next stitch, draw the stitch up. 1172

The position of the needle is out of line with the run. We don't have to hold it straight with it. It is out of line with the run, similar to a pencil, you could say, or a pen in writing. I am holding the needle in my hand as I would hold a pencil or pen in writing. You have the stitch back of the latch, and you take up the next thread, draw it through, and put it right back in, in line with the next stitch.

Q88. In order that we may have a definite reference to the parts which you are describing, let us call the first loop in which you put the needle "loop No. 1." A. Yes, sir. 1173

Q89. And then let us call the next thread which will form the second loop "thread No. 2." A. Yes, sir.

I put the hook into No. 1, which goes back of the latch, put it into the open space between your thumb and your finger, and draw the needle up, and draw the No. 2 through No. 1 and put it back into the goods again. All of this time I am hold-

ing the needle out of line with the run. Then I draw the next stitch through to go into the next—go into the mitten again, and then I form other loops continuing the operation until the run is finished. The last loop I used to tear, cut it, and knit it back in through the other two stitches, and tie a knot on the wrong side, which of course, would not show the run. It would look as if there had been a knot in the yarn that was knit. This method I have described was used in the Phoenix Company when I left and when I came back. They are using it at
1175 present.

Q104. I will get you to again insert the hook of the needle into the loop as if you were again starting the operation. Reach forward to engage the next advanced thread, which we will call thread No. 2, in the hook end of the needle, and tell me whether the hook end of the needle is below or above the fabric. A. Below the fabric.

Q105. Now draw the thread No. 2 through loop No. 1, as you have previously described, and tell me where the hook end of the needle is now. A. It goes right back underneath the fabric.

It is below the fabric now, ready to take the next stitch. At the end of the operation in forming a
1176 loop, after you have completely taken the loop, the hook end of the needle is above the fabric; you put the needle right back in again. You go from a position above the fabric to a position below the fabric. During that time I have not changed the inclined position of the needle with reference to the run. It is just the same.

I do not know any of the parties to this suit. I do not know anything about the litigation between the parties.

CROSS EXAMINATION BY MR. HODGES:

I have been starting at the wrong end of the run. It does not make any difference, though. You can mend it from either end. It depends on the material. I never tried it on sheer hose. In the goods I am demonstrating with, there are about fourteen cross threads to an inch.

XQ122. How fast can you do that operation,

Mr. Orton: Objection is taken to any question relating to the speed at which this operator can perform the operation, as the matter of speed was not involved in her direct testimony. 1178

(Testimony taken subject to the objection.)

A. I have not done any of that since 1906. I don't know.

Mr. Orton: There has been no manner or scheme indicated to this witness by which she could measure any speed of operation in looping.

MR. HODGES: 1179

XQ125. Now will you do four or five loops, just as fast as you can.

Mr. Orton: Objection is taken to these directions, because it might perhaps be true that the witness, operating as fast as she could, might perform some operation which would be different from the operation performed when she made the demonstrations during the direct testimony.

(Testimony taken subject to the objection.)

MR. HODGES:

XQ126. Will you please do it as rapidly as you can, five or six loops, the way you did it before? A. (Witness demonstrates.) I am not doing them evenly.

XQ127. Have you relooped every thread, every cross thread, so far as you have gone? A. I did not pay any attention to that, no.

XQ128. Will you please repeat that operation as fast as you can, and do it with each cross thread?

1181 Mr. Orton: Same objection.

(Testimony taken subject to the objection.)

A. I have not done it for so long that I don't—

Mr. Orton: That you don't what?

A. I will do it down here, I think, do it the way I should do it, the way we always did it; I have not got my glasses with me, and I cannot see all the stitches.

I don't know whether the hook and latch were turned to the right side, as I did that. You hold
1182 it with your right hand, of course. You are favoring your right hand in holding it. You are holding the needle so that you get the next stitch. You are taking it right from the center.

MR. HODGES:

XQ136. And when you were operating were you turning the latch and the hook toward the right or toward the left of the center? A. Putting it into the material.

XQ137. No. I am talking about the hook and the latch. Will you please look and see. Just at present are you not turning the hook and the latch towards the right? A. This way (indicating).

XQ138. Toward the right or left? A. Up.

XQ139. But the hook and latch, are they in towards your right hand more than towards your left? A. Yes, sir; I am holding it in my hand.

XQ140. The hook and latch are toward the right, are they not, slightly? A. You are holding it like this (illustrating).

XQ141. I am talking now about the hook and latch. How are you holding them? A. As the needle would be held when I hold it this way (illustrating). 1184

XQ142. Yes. The butt end or the end in your fingers; and are you not turning your needle over toward the right a little? A. Not that I know of.

XQ143. Will you please note, if you can see. I want you to operate it, as nearly as you can recall after these length of years. Now as you hold it, look in your hand and see what direction the handle of the needle is. Is it towards the right or towards the left? A. I think you mean the right. I don't know.

XQ144. The side toward me? A. I am holding the needle in this hand. Of course, I do not know what you call it then. 1185

XQ145. The side toward me is your right. A. Yes, sir.

XQ146. And you are holding it a little over toward me, are you not? A. Yes.

XQ147. Now will you try to reknit where you are, three or four stitches.

(Witness demonstrates as requested.)

XQ148. You then went over the top, did you not? You then pushed it in over the top? A. You push it in over the top.

Mr. Orton: It is noted that at this time when the needle went over the top, the needle was not at all in engagement with the fabric.

Mr. Hodges: On the contrary—I beg your pardon; I was standing right over it, and it was in the fabric.

The Witness: I took it out.

1187 It was not in the stitch. It is not in the stitch now. It was in several loops. I am working as fast as I can but I am not getting every stitch. I am skipping a good many cross threads because I cannot see them. (Witness and counsel move over near the window.) I am skipping threads occasionally now, but the idea is to go right down and pick up the next stitch.

You have to clear the latch to get the next stitch. Put right down again. That is the way we were taught; pull the stitch way up, and go right back in there for the next stitch.

I used a finger to open the latch then. It is not
1188 customary. It occasionally happens, and in the machine too. I don't know that that does it in the hand reknitting when it is not open. I only remember how to knit, but I cannot remember exact details otherwise.

XQ165. Now, in doing this, I noticed you were working practically parallel with the run and pushing forward, and in line with it—maybe not always in line with it—but you were working more or less parallel with the run, were you not, in the fabric? A. Right into the fabric, and then you have to go right back in again and get the next stitch.

In doing that, I am not resting my needle on the body of the fabric part of the time, back of the loop. There is no fabric there.

You take it up. Of course I have more than one stitch now, but it is hard to get through. I did not move it in various directions. You move right back in again. I always keep it in the same direction; to get the next stitch you have to do that.

XQ176. When you pull back, please stop. Isn't your needle resting down here on the fabric right next to the— A. (Interrupting.) That is in the next loop.

1190

XQ177. But this part of the needle where the latch comes, when it is open, is it not resting right on the glove? A. No; that is the next loop. You put your needle in and get it right back up again.

I take one stitch at a time. I should have practiced this. I have got two or three threads in there. (Witness demonstrates.)

XQ181. Stop, please. Now you have cleared the latch with the loop. Please hold it where you are. Your needle is on top of the goods, is it not? A. Yes, sir.

XQ183. Now, proceed. A. (Witness demonstrates.)

1191

XQ184. Stop; stop. But you did not stop. Please do it again, and stop when I say "stop." A. That is because I did not get the stitches the way they should be. You see, I don't know whether I get a stitch there or not. (Witness continues demonstration.)

XQ185. Now stop, please. Now, isn't the hook and latch turned over toward your right hand a little?

Mr. Gilligan: You turned it back after he talked to you.

Mr. Hodges: Try it again.

1192 A. You have to hold your needle this way. You cannot get the stitches otherwise.

XQ185a. I am trying to get you to show where your latch and hook are, whether turned a little to the right or not. Will you please answer the question. A. They are this way, yes, a little bit; not much.

I have not noticed that in the operation, I rest the body of the needle on the glove. I got in two or three stitches each time. That does not make any difference. I skipped two or three threads. I
1193 got two or three on the hook at one time. I got two or three because in pushing my needle in, I pushed it forward under several threads. I went too far. When I start to bring it back, it catches several threads instead of one. My needle is now just about on the flat surface plane with the run where I hold that. When I said "out of alignment" I meant off to the side. It is not even. When I push it in and come back, I sometimes catch three or four threads instead of one, but you do not rest your needle because it is not necessary. It just poses loosely in contact with the next stitch.

In operating, I move the needle—the end that my right hand holds—away from, and toward the stock-
1194 ing in the different operations, once under the stocking and once above the stocking. When you get the stitch above the stocking, you have to come right back in there again to get the next stitch. And in pushing forward and pulling back, you do not bring the handle of the needle down close to the glove.

XQ205. Several times I have noticed you did, but perhaps you did not observe it, because you have not on your eye glasses. A. I have not done it for so long that I probably did not observe all those little things.

I have not forgotten how. If I take my time, I can mend this. I have the theory but not the practice, but long ago I had the practice. (Witness demonstrates.)

The needle is now under about four or five threads and close up to the threads underneath. With respect to my body this needle was perpendicular, not parallel.

Mr. Orton: The witness indicated a line extending transversely to the body from left to right.

(Witness demonstrates.) 1196

The needle is slanting now with reference to my body, slanting from the body. My body is perpendicular to the needle. The needle was not practically down on a level with the run, except when I did not have the needle in my hand.

We are used to having the stocking tight on our hand, or the mitten, and it is easier working from this end (illustrating). I never mended from the other end. I always mended with the goods the other way. (Witness demonstrates.)

I don't know whether I am catching about every alternate thread. I thought I was getting about 1197
two or three threads at a time. My needle is now almost about in line with the pen you are holding over the glass, but I would not say it is about parallel with the glove. The whole length of the pen is about parallel with the glove.

XQ245. Isn't the needle just about parallel with the pen? A. At right angles.

XQ246. At right angles? A. Yes, sir. You can see there is an angle.

XQ247. Is it not just lying alongside of the—

Mr. Orton (Interrupting): Wait a minute. It is noted that during the discussion of the position of the pen held by Mr. Hodges, and the needle, that the needle was not in the position in which the operator has been demonstrating the position of the needle when making the relooping, but was positioned approximately three-eighths of an inch above the plane of the fabric.

(Testimony taken subject to the objection.)

1199 As I am now holding the needle, the whole line of cross threads are right square in front of me. The needle is at right angles to the threads. I have raised the run a little higher than the rest, because it is the end of the run.

XQ258. Now I will ask you, as you hold it now—please do not move—isn't there a decided slope from the extreme end of the run toward you up to the point where your needle is, as compared with the part of the run in front of you? A. That is due to the shape of the holding of the hand.

XQ259. I did not ask you to explain why. I asked you to answer the question. A. Yes, sir.

XQ260. Now, as you hold the needle, isn't the
1200 part of the run that is in front of your needle, and away from you, practically on a level with the direction in which you are poking your needle in and out? A. It is at an angle to the run.

XQ262. Yes, and it is about in a plane with the run that you are aiming to correct, is that right? A. The needle is the same as the run.

XQ263. About on the same level? A. No.

XQ274. Now you are doing precisely what I said you were doing. You were holding your needle practically in line with the part of the run ahead of

your needle. Is that right? A. I thought I was holding it this way (illustrating).

XQ275. You are holding it off at the right; but as you go down under and close a number of the cross threads, or over them to change your latch, and catch another loop, you must necessarily, must you not, have your needle more or less parallel with your run?

Mr. Orton: Objection is taken to many of these questions which are being asked at this time, particularly the suggestion that has just been made, that the end of the needle goes over the top of the fabric. No such demonstration has been made by the witness. 1202

Mr. Hodges: I have seen the witness several times carry the hook of her needle over the top of the run.

Mr. Orton: But not at the time she was describing the operation she performed at the time queried in the direct examination.

Deposition closed.

MRS. MARJORIE CONVERSE of the City and County of Milwaukee and State of Wisconsin, residing more than 100 miles from the place where the trial of this action will occur, and being a witness mentioned in said order to take depositions and a witness called on behalf of the defendant herein, being duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and being carefully examined, deposes and says, in answer to interrogatories propounded to her by Mr. Orton as follows: 1203

1204 *Deposition of Marjorie Converse. Direct.*

My name is Marjorie Converse; I am of legal age; I reside at 812 State Street, Milwaukee, Wisconsin. I am employed at present at the Phoenix Hosiery Company. My business there is inspecting and mending, in the mending and inspecting department. I have been employed by the Phoenix Hosiery Company going on 12 years, I think. I went there in June, 1918. I am a widow. My husband died in April, 1918. Prior to my husband's death I was not engaged in any work, except housework.

About the time to which I refer in 1918, the
1205 ladies of the country were engaged extensively in embroidery work. At that time I did embroidery work and in doing so I used a little hoop—a little red, hard rubber hoop. The hoop was like you have in your hand, in two parts, one small part and a larger part that fitted over the smaller part.

Mr. Orton: The witness is referring to the embroidery hoop, Defendant's Exhibit 5.

In this embroidery work, the fabric to be embroidered was stretched over these hoops.

When I first went with the Phoenix Hosiery Company in 1918, I sorted gloves. After that I in-
1206 spected gloves, mending and inspecting gloves. My next job was knitting; I went on a circular knitting machine; men's socks. It was a machine like that shown in the lower left hand side of the page of the Underwear and Hosiery Review, being Defendant's Exhibit 1. That is the kind of a machine I worked on at that time; not exactly like that, but a single machine like that.

I do not remember seeing any runs occur on the knitted goods which I knitted on such machine, but if there were holes in them—we looked for holes,

then we laid them aside, laid them out of the machine.

I worked on the circular knitting machine about four weeks, in 1918. The following year, about January 1919, I was transferred as an inspector and mender in the mending department. My duties were to inspect the stockings and look for runs and holes. My duties now are the same. From January 1919 to date, I have been mending and inspecting.

When I went to the mending department in January 1919 I was taught how to repair runs in 1208
fabrics. At that time we used the knitting machine needle. We called them latchers and we were taught to use them. We put our hands in the stocking, and if we found a run, we would put the needle in the stitch at the end of the run and latched it up—what we call latching. Here on the table is one of those latchers, and here is one, and here is one (indicating).

Mr. Orton: Witness refers to Defendant's Exhibits 4 and 11.

Those were the type of latchers I used in 1919. They are the same form of latchers we use now, but 1209
not this coarse one, a finer one. This is a real heavy needle and this is a fine one. This is the fine needle that we use now, like that (indicating).

Mr. Orton: Witness is now referring to Defendant's Exhibit 11.

At the time I was taught in January 1919, the menders all used the same latched needle. Of course, we did not watch one another work. They all used pivoted latched needles. I think they all

used them in the same way. I know we all had the same needles.

In repairing stockings in January 1919, you had to put your hand—run your hand in the stocking. I have produced a stocking to help in demonstrating the method that I used.

Mr. Orton: Witness produces a stocking. Defendant introduces the stocking produced by the witness, and asks that it be marked Defendant's Exhibit 14.

1211

Q50. Please position the stocking, Defendant's Exhibit 14, on your hand, in the same way that you positioned it on your hand in 1919. Position it on your hand. A. This was our method (witness demonstrates).

Q51. I will get you to hold your hand in that stocking in the position in which you held your hand in 1919, in repairing runs. A. (Witness demonstrates.)

The stocking I hold in my hand has a run in it. I now have the stocking on my hand as I had it in 1919. My hand is spread. The fingers are spread out to stretch the stocking. My thumb is in the

1212 stocking, spread away from the fingers. I have the stocking stretched in that position. The run is directly in the center of the stocking—of the thumb and fingers. It runs from my body away from me. The run is broken up here, and it runs away from me, and sometimes it is reversed; the run is broken down here, and runs up this way (witness indicates).

Mr. Orton: The witness first points to the Welt end of the run, and then reverses the posi-

tion of her hand, and points to the end of the run nearest the hole.

I repaired in both directions. There is a space between the run and my hand. I have brought with me one of the latchers which I have been using in the repair of hosiery.

Mr. Orton: Witness produces a latcher. The latcher thus produced is introduced in evidence and marked Defendant's Exhibit 15.

The latcher is a little pointed needle, with a hook 1214
on the edge and has a latch that works up and down. In working up and down, it latches. With reference to the hook, it opens and closes. The part I hold in my hand is the handle. I do not know whether the handle is hard rubber or bone. The needle I think, is made of steel.

Q73. Now I will get you to position the hand with reference to the run, as you did it in 1919, at the beginning of the relooping operation, and describe the position of your hand, the needle, and the run. A. I insert the hook end of the needle into the loop of the run; the first stitch of the run, I insert the hook of the needle into so that I have got 1215
the first stitch in the hook end of the needle.

Q76. Now suppose you perform one or two looping operations so that we may see what you are doing. A. (Witness demonstrates.)

This was the method I first did when I went to the Phoenix Hosiery Company in 1918. In 1918, I also performed the relooping operation by other means. I used a little round embroidery hoop, such as Defendant's Exhibit 5, but this was very much thinner than that. I do not have one of the hoops

that I used. I think that I can perform the operation on these hoops, even though they are thicker.

Q84. Assume, then, that the hoops, Defendant's Exhibit 5, which I hand you, were the thinner hoops which you used, will you please position the hoop in the stocking in the same way that you did in 1919? These hoops are very loose, mine were very tight. They will hardly hold the stocking very tight. I have now positioned the stocking in the embroidery hoop. The stocking is stretched over the smaller hoop with a larger hoop clamped or pressed
1217 over it, and that holds the stocking stretched. As I now hold the hoop the run is in the center running away from me. I am holding the hoop between the thumb and fingers, the thumb is on top and the fingers underneath, and I have tilted it so that it is nearest me.

Q95. Please try to hold it in that position; and now position the needle, Defendant's Exhibit 15, which you hold in your right hand, in the position with reference to the run in which it was positioned in 1919. A. (Witness demonstrates.)

I have inserted the hook in the loop of the run, at an angle to the run. It is pushed down beneath.
1218 The hook end is below the fabric. Next you push the needle down, which opens the latch, and you pull it up. You push the hook end of the needle down underneath the first thread in front of the loop. The first loop, to which I have referred, is on the needle, between the hook and the latch. It is holding the latch open. The next thing I do, I push it down underneath the next thread. I push the needle down over the latch. By that the latch comes over the hook, and then I pull it back and reknit, pull the thread through, and that closes the latch. The first loop is looped on the needle; it

makes a loop on the needle. The loop on the needle now is left behind. The new loop I have just formed is still on the needle, between the latch and the hook. I pull it through the first loop. While doing that I was holding the needle in line with the run. By "in line with the run" I mean the way the hook is pointing towards, or the way the run is running; the threads are running, loose threads; the run—at an angle with the run. I do not know what you would call it. It is pointing towards, right over the run, towards the way the run is going. It is at an angle to the run, I guess. I know, but I do 1220
not know how to explain it, I guess. During this operation, the latcher was held in line with the run, that way (illustrating); the run is going that way, and the needle is pointing that way (indicating); that is what I mean.

As I was performing this operation of drawing the loop through the previous loop to form the second loop. I did not change the position of the inclined needle. I pushed it down beneath; I pushed the point down. As far as the whole needle is concerned, I don't know whether I changed the angle or the position in its relation to the line of the run.

The next thing you do is to repeat the operation, 1221
pick up the thread in front of the hook, and pull it through the loop on the needle. In doing this I am not rotating the needle. I am slanting the needle—well, I guess that is up and down; that is the only way I can figure it out. When the relooping of all the loops is done, you picked up the last loop and sewed it, fastened it with a needle and thread, by matching the stitches, so that it will not run again. If you did not do that, it would run back again, and you would have to do it all over again.

1222 I used other articles to hold the stocking while I was relooping during the year 1919. I used a little glass, and I used my hand, cupped my hand in the same way that I have just cupped my hand. The glass I used was a little small tumbler or glass. I don't know what it is; it is a little glass such as I hold in my hand, a whisky glass or wine glass, I guess. I did not use any other article to hold the stocking stretched, just the hoops and the glass and my hand. I did not use these articles, the hoops and the glass, long—probably about a few weeks. I
1223 abandoned their use because they did not work as good as my bare hand. I could work faster with my hand.

At the Phoenix Company I was paid at that time by piece work. For that reason it was to my advantage to work as fast as I could and I found that when using the hoops and glass, I did not work as fast as when I cupped my hand. I don't know why it was, unless it is by the feel of the stitches and hook and everything on your hand; you can do a good deal by feeling, don't you know, in a lot of things. It took time to mount the stocking on the hoop. It was inconvenient to slide it on the stockings. I done the embroidery work, and I thought it
1224 was almost like this mending I done, and I tried my hoop out on it; I thought I could work the hoop like the embroidery because I done a good deal of that fancy work stuff.

Q153. I will now get you just for a moment to use the wine glass which you have produced, and position the stocking, Defendant's Exhibit 14, which you have on your glass, in the same manner that you did in 1919. A. (Witness demonstrates.)

I put the glass in the stocking, and stretched the stocking over the glass holding it in my left hand,

holding the stocking tight around the glass, and I I am clamping the stocking between my thumb and forefinger and the glass. The stocking is stretched with the run in the center of the glass, on top of the stocking. The latcher, Defendant's Exhibit 15, is positioned pointing downwards towards the run in the stocking. I am holding the glass slanting towards me. I am holding the needle between my thumb and forefinger.

As I did it in 1919, the hook goes into the first stitch in the run; the one nearest me; and you get the stitch between the hook and the latcher, and then you pick up the thread in front of the hook, 1226 between the hook and the latcher, and you push the loop on the needle over the latcher, and then you draw the needle back, and that closes the latcher and brings the thread in front through the loop on the needle, and each thread is lifted—the falling threads. You take up each thread, and pull it through the loop on the needle.

As I did this, the hook end of the needle went down underneath the thread; it went through the work, or stocking, and then it opened the latch. As I pulled it towards me that closed the latch. As I lifted it towards me the hook end was below the fabric.

1227

Q169. Hold it in that position in which it was poised when nearest you; that is, when you had drawn one loop through the other. A. (Witness demonstrates.)

Holding it in that position, the hook end of the needle is above the fabric; above the run. I go from a position beneath the fabric to catch the advance thread, to a position above the fabric when I have finished forming the loop. In doing this I have not changed the inclined position of the needle. I held it almost in the same position.

1228 The methods of repairing runs in hosiery, in which hoops and glasses were used, were used by the other menders when I went there in 1919. They do not use the method, over the glass, at present; just over the hand. Except for the fact that they positioned the stocking over the hand, the operation is the same as I have described. None of the menders now at the Phoenix Hosiery Company were there in 1919, not in the mending department that I am in. I am the mender who has been longest with the Phoenix Hosiery Company in this mending department. We have two mending depart-
1229 ments; one on finished work and one on white work that comes from the knitters. The operation is the same thing. The mending is the same there. I am in the inspecting department, the finished work, as it comes from the knitters. Except for the fact that in one case the goods is what you called finished, and in the other case unfinished, the operation has always been the same.

I demonstrated a method of relooping runs before a motion picture machine last year, at that motion picture photo store over on 220 Wells Street. The method I demonstrated before the motion picture camera was the same method I have
1230 just shown you. Pauline Krause also made a similar demonstration at the same time and place. She used to be my forelady at the Phoenix. I witnessed Miss Krause making this demonstration before the motion picture machine. The methods used by the menders in the Phoenix Hosiery Department in 1919 were just the same. Miss Krause's present name is Mrs. Rhode. At present she is in Moline, Illinois. She is not at present employed by the Phoenix Hosiery Company.

I later visited the studio of the Photoart House at 220 Wells Street to witness a showing of the pic-

tures taken of me and Miss Krause. I don't remember just what date, but it was shortly after the pictures were taken, a few days later. I don't remember when these pictures were taken. I think it was during the Summer months of 1929. At the time I saw this demonstration, Mr. Orton was with me. I don't know if I am referring to you. I don't remember your name. This was a real fat gentleman. I guess you were present at the time I first performed before the motion picture camera. I think so. You were there I think when they were shown. I think you were there both times.

1232

The pictures correctly represented the manner in which I repaired runs in 1919. Besides Mr. Orton, Miss Krause and the gentleman who took the pictures were present. At the time, Miss Krause did not say anything about the showing of her pictures. No conversation took place between us at that time.

Mr. Orton: We will now adjourn to the Photoart House, to witness a motion picture demonstration.

Mr. Gilligan: Same objection to be noted to this demonstration of the moving pictures as was noted before.

1233

(Thereupon an adjournment was taken to meet at the studio of the Photoart House, 220 Wells St., Milwaukee, Wis.)

1234 *Deposition of Marjorie Converse. Direct.*

After adjournment.

MRS. MARJORIE CONVERSE resumed the stand for further direct examination by Mr. Orton and testified as follows:

(In a projection room at the Photoart House, 220 Wells St., the notary handed Defendant's Exhibit 12, being pictures taken in June 1929, to a motion picture operator who positioned it in a projector, and there displayed pictures on a screen, in the presence of
1235 the witness and the other parties.)

The first half of the film displayed, Defendant's Exhibit 12, following the card reading "Marjorie Converse" correctly shows one of the methods I practiced in 1919. The last half of the film displayed, following the card reading "Pauline Krause" correctly shows one of the methods practiced by her when she was at the Phoenix Company in 1919. I can identify the projected pictures as the showing that took place when Pauline Krause and I posed for the moving pictures in June 1929. They correctly represent the demonstration made
1236 by me at that time, in 1929. They correctly represent the demonstration made by Pauline Krause at that time. I can and do identify the pictures on the first part of the film as being those of my own hand. I don't think I can identify the pictures of the hands on the last part of the film as being those of Pauline Krause. I have no reason to believe they were not pictures of her hands.

(The witness and the other parties present then left the projection room, and proceeded to the studio at Photoart House, 220 Wells

Street, Milwaukee, Wisconsin, and there Mr. Orton handed the witness Defendant's Exhibits 14 and 15, and instructed her to pose before the motion picture camera as she had previously posed in making her demonstrations today, and to repeat several times the method which she had testified that she first performed in 1919. During this time the motion picture operator took pictures of the witness' hands from several positions, and finally took some pictures, intended to be displayed as slow motion pictures of the method demonstrated by the witness. 1238

The operator was then instructed to prepare a card reading "The Stelos Company, Inc., vs. Hosiery Motor Mend Corporation, Exhibit 16. Demonstration by Marjorie Converse, April 25, 1930"; and to insert the display of the same as a heading preceding the pictures taken today; and to attach the film taken today to the film of pictures taken April 23, 1930 of Mr. Edward E. Busek, being Defendant's Exhibit 7; and, when completed to display both Defendant's Exhibits 7 and 16 to the witnesses, Mr. Edward E. Busek and to Mrs. Marjorie Converse, in the presence of Joseph 1239 M. Carney, the notary taking these depositions; then to seal the exhibits in a metal case, and deliver the sealed case to Mr. Carney.

The Notary is instructed to mark the entire film, when received, as "Defendant's Exhibits 7 and 16," and to obtain from the photographer a certificate, in the usual form, that such film, or pictures, was taken at this time and place.

The photographer was then instructed at this time to seal up Defendant's Exhibit 12, to

1240 *Deposition of Marjorie Converse. Direct.*

prevent it from becoming dry, and to deliver the same to Mr. Carney.

The photographer stated that it would take about two weeks to finish Defendant's Exhibits 7 and 16).

In my demonstration before the camera which I have just completed, I did exactly the same thing as I did in relooping runs in hosiery while a member of the Phoenix Hosiery Company during 1919, and exactly as I have done in my demonstration at the Schroeder Hotel.

1241

After adjournment.

Q232. I will ask you to take the little wine glass, on which you have been demonstrating, take the stocking, Defendant's Exhibit 14, and the latcher, Defendant's Exhibit 15, and do exactly what I tell you to do:

Stretch the stocking over the holder, that is, the glass which you now hold in your hand. Insert the repair device, that is, the latcher which you hold in your hand, through a loop formed in the run or raveling. Continue this method on through the

1242 fabric while holding the latcher laterally out of alignment.

Mr. Orton: It is noted that Mrs. Converse is doing more than I asked of her, and I will ask her to do nothing more than exactly what I tell her to do, doing it slowly.

Q. (Continuing) You have stretched the fabric over the holder. Now, please insert the latcher through a loop formed in the run or raveling. Take this movement on through the fabric while holding

the latcher laterally out of alignment with the run or raveling until the loop has slid back over the end of the latch and beyond the latter. Now reverse the movement of the device through the loop, catching the next forward thread in the hook, causing the latch to close over the thread. Cast the loop off the end of the device. Cause the thread caught in the hook to form a new loop to take the place of the first loop; then reinsert the device into the fabric as before, and repeat the operation until the run or raveling has been repaired. Now take the threaded needle which I hand you and fasten the thread. A. (Witness demonstrates.) This thread is too coarse to force the run back. 1244

(Witness continues the demonstration.)

I have done exactly as you told me to do. The method you have just dictated to me is the same as the method I practiced in 1919. They are identically the same.

I am not in any way connected with the parties to this suit and have no interest in the outcome of any litigation between the parties.

Mr. Orton: Defendant offers in evidence the wine glass used by the witness in her demonstrations, and asks that it be marked as Defendant's Exhibit 17. 1245

(Said wine glass was so marked "Defendant's Exhibit 17".)

CROSS EXAMINATION BY MR. HODGES:

The material in Defendant's Exhibit 14 on which I have been working is imitation of silk. It is called "Rayon". We call that a coarse stocking. There

are about 31 cross threads to an inch. I sometimes repair hosiery where there are as high as 50 cross threads to an inch in a run, and higher than that. I have to watch my stitch as I make it. That is true always in my work. You have to look very closely at it. It is quite an eye strain; especially on very fine hosiery. I have never tried looking off while I have been reknitting runs. It would be a failure if I did. I think it would be the same about the other operations as I have observed them. I have never heard of anyone in the Phoenix factory repairing
1247 room doing it that way. We never look at one another working.

XQ254. Would that apply equally well to your work in the finger method which you demonstrated yesterday? A. Yes, sir.

Mr. Orton: There has been no method identified in the direct examination as being a finger method.

(Testimony taken subject to the objection.)

XQ255. Now will you demonstrate for me as I ask you; and before you do that, may I ask whether you get any more nervous under my examination
1248 than under Mr. Orton's? A. No, sir.

XQ257. Make another run. Now please insert the hook of your latcher as you customarily do in the last loop nearest you.

Mr. Orton: It is noted at this time that the witness has her hand inserted in the stocking, and is stretching the stocking by spreading the fingers.

Either way over the glass or over my finger is convenient. With the stocking stretched over the

finger, is my present method, and has been for several years. The portion of the run right in advance of the hook on my needle is now right over one of my fingers. The second finger of the left hand is the first one. That is the way you usually do it.

Mr. Orton: This is not the position of the run as was demonstrated by the witness in her direct examination.

XQ263. And your finger is directly against the inside, or lower side, of the cross threads of the run, in advance of the hook, is it not? A. Yes, sir. 1250

Mr. Orton: The witness is at present being examined on a method which was no part of her original testimony. In her original testimony the run was spaced between the thumb and fingers, and neither the finger nor the thumb are directly under the run. She is now being examined on an entirely different method.

XQ264. You placed your finger there voluntarily and of your own accord, did you not, when I asked you to demonstrate? A. You asked me to place it either on my hand or the glass. 1251

I placed my second finger of my left hand just where I have it now, of my own accord without your asking me to especially do that.

Mr. Orton: Mr. Orton still insists that this cross examination is directed to a method which formed no part of this witness' original testimony, and it is apparent that the present position of her finger beneath the run was due

1252 *Deposition of Marjorie Converse. Cross.*

to a more or less accidental insertion of the hand into the stocking.

(Testimony taken subject to the objection.)

The shank of my needle—the part from the hook to the handle—is practically on a line with the run in advance of it and over my finger. Calling the loop on the hook "L" that is the loop I found at the end of the run, nearest me when I started.

XQ270. Now will you proceed with the next thread, which we shall call "1" and reloop that into
1253 the loop now on your needle. A. (Witness demonstrates.)

XQ271. Will you now make another, number 2, the same way. Now, hold that, please. Now, as you do that, you have two loops about midway on the latch, have you not, and over the latch— A. (Interrupting) One loop and a thread.

Q. (Continuing)—over the latch, about midway between the end of the latch and the hook, is that right? A. Yes, sir.

My hook is over one thread in advance—one loop and one thread.

XQ274. No; but I mean in advance of where those loops are; you pulled it back. Please put it
1254 where you had it.

Mr. Orton: It is noted that at this time the hook end of the needle is wobbling back and forth.

XQ275. Now will you make another, the same way, number 3. A. (Witness demonstrates.)

The hook is in front of the cross threads ahead of it. It is under it; the hook is under the thread. The thread is over the shank of the needle. One thread is in front of the loop and one in back of it.

The hook with respect to the cross threads in the run is above the fabric.

XQ283. Hold it right there. You are pulling it back. You are pulling the loop over it. Will you leave it where it was?

Mr. Orton: It is noted that the witness is now describing an operation which was not referred to, and not shown, while she was testifying in her direct examination.

(Testimony taken subject to the objection.)

The hook is over two threads. (Witness demonstrates.) The hook is now over three threads. 1256

XQ288. Only three?

Mr. Orton: Same objection.

(Testimony taken subject to the objection.)

XQ289. Anyway, it is over the top of the fabric, with the fabric between the hook and your finger, isn't that right? A. Yes, sir.

XQ290. All right. Please repeat now as fast as you can generally operate.

Mr. Orton: Objection is taken to the direction to the witness to perform this operation fast, as there were no instructions given, or references made, to the speed of operation during the direct examination; and it is apparent from what the witness is doing that she is not performing the method disclosed during her direct testimony and which difference in method is apparently due to her effort to comply with Mr. Hodges' instruction to move fast. 1257

(Testimony taken subject to the objection.)

1258 *Deposition of Marjorie Converse. Cross.*

That is about my normal speed of operation. Each time I drop a loop from the end of my latch, I push the needle over the top of the cross threads in front. That is the usual method when I am working over my finger and over the glass, and as shown on the photograph.

That is the same method I did yesterday for Mr. Orton when he was examining me, but over the glass. I did not operate over my hand yesterday. So far as I know, Mrs. Rhode and all the others operated the same way, in the repair work. Mr.
1259 Busek never saw me operate that way. I was not in his department. I don't know Mr. Ruedt. They have foreladies to inspect and examine how we are doing the work. They knew just how we did it.

XQ304. About how many stockings could you do a day, on an average?

Mr. Orton: Objected to on the ground that she was not asked any questions in her direct examination as to the speed at which she could repair stockings.

(Testimony taken subject to the objection.)

A. It all depends on how many holes or how large
1260 they are, in that work. If they are small, maybe I can get out 8 or 9 or 10 dozen. If the holes are not large.

XQ308. Did Mrs. Rhode or Miss Krause, teach you how to do this? A. Yes, sir.

Mr. Orton: Objected to on the ground that the question is indefinite, in that Mr. Hodges has not pointed out what he means by "doing this".

(Testimony taken subject to the objection.)

1261

In doing what I have just done I followed the instructions as Mrs. Rhode taught me. She did it in that same way. She was my forelady at the time, and I came under her supervision and instruction. She taught the others the same way.

In following Mr. Orton's instructions in which he instructed me to do a special thing, I went directly through the goods with each downward motion when I followed his instructions, instead of going over the top in each cycle of movement. I formed one loop at a time when he instructed me in his recent question. I don't remember how many all together.

1262

XQ318. About one or two, was it—one loop wasn't it? A. Yes, sir.

REDIRECT EXAMINATION BY MR. ORTON:

RDQ319. Now, Mrs. Converse, isn't it true that when you were demonstrating and testifying yesterday with the stocking on your hand, that you had the run positioned between the thumb and little finger, and not over the little finger, as you had it when you were showing Mr. Hodges a moment ago?

1263

Mr. Hodges: One minute, please. That is objected to as both leading, and furthermore, with the attorney practically directing and positioning the stocking on the witness' hand.

(Testimony taken subject to the objection.)

BY MR. ORTON:

RDQ320. I will ask you, then, to position the stocking on your hand in the same way that you positioned it on your hand when you were showing me this hand method yesterday.

1264 Mr. Hodges: The question is equally leading, following the last question, and after the definite instructions given the witness in that question.

(Testimony taken subject to the objection.)

MR. ORTON:

RDQ321. You now have the stocking on your hand in the position in which it was when you were testifying yesterday; is that true? A. Yes, sir.

1265 Mr. Hodges: And furthermore, the witness, in answer to one of counsel-for-plaintiff's questions said she did not demonstrate over her hand yesterday, if I remember correctly.

MR. ORTON:

RDQ322. Did you demonstrate over your hand yesterday? A. I don't remember. I think I used the glass only. I think I just showed you how I held it on my hand. I didn't demonstrate. I demonstrated over the glass.

1266 RDQ323. Well, I will get you to just think a moment, Mrs. Converse. Do you recall that yesterday you held the stocking on your hand as you are now holding it?

Mr. Hodges: Objected to as leading.

(Testimony taken subject to the objection.)

A. I remember of holding it on my hand.

RDQ325. I will now ask you to pick up from the table in front of you the latcher which you have been using, Defendant's Exhibit 15, and ask you

to repeat for me what you did yesterday when you held this latcher in your hand.

Mr. Hodges: Same objection.
(Testimony taken subject to the objection.)

RDQ326. Just repeat it. A. (Witness demonstrates.)

RDQ327. What are you doing now? A. Latching the run.

RDQ328. The same way you did it yesterday? A. Yes.

1268

Mr. Hodges: Objected to as leading.
(Testimony taken subject to the objection.)

The run is between my thumb and little finger. It is not over the little finger. It was not over the little finger when I was demonstrating for Mr. Hodges a few minutes ago. The stocking was over the whole hand. The run was over the second finger, and in engagement with the second finger.

RDQ335. Is it so positioned at present? A. No, sir.

Mr. Hodges: Same objection all the way through. 1269

(Testimony taken subject to the objection.)

The method I described while Mr. Hodges was cross-examining me was different from the method I described to you yesterday. In the case I described yesterday the run was not positioned over any finger. It was spaced from the finger, so that I could get under the fabric. In the method which I demonstrated to Mr. Hodges, with my finger under the run, I could not get under the fabric.

The finger was in the way. If I had attempted to do the method which I showed you when my hand was in the position that it was while I was being examined by Mr. Hodges, the end of the needle would have pricked my finger. It does not prick my finger as I am performing at present. I have been describing two different methods.

I told Mr. Hodges that when I performed the method you dictated to me I made one loop, that is all you can make at one time, but I made a large number of loops, one after the other, between the
1271 first loop and the last loop, when you told me to fasten it.

Mr. Hodges: Motion will be made to strike out all this redirect examination, because grossly leading; but the cross examination will proceed without waiving counsel's right to urge this motion in Court.

RECROSS EXAMINATION BY MR. HODGES:

RXQ349. Which loop did you call number one in demonstrating for Mr. Orton—

Mr. Orton: Objection is taken to this question on the ground that in the redirect exam-
1272 ination no reference was made to any numbered loops.

Mr. Hodges: I had not finished.

Q. (Continuing)—when he asked you to follow his instruction.

Mr. Orton: Same objection.

(Testimony taken subject to the objection.)

MR. HODGES:

RXQ350. Now will you please answer; which one do you call "One"—the loop already there, or the first one you formed?

1273

Mr. Orton: I do not want to limit you in your questions, Mr. Hodges, but it is perfectly apparent that the redirect examination is closed.

(Testimony taken subject to the objection.)

MR. HODGES:

RXQ351. Will you please answer? A. The loop in the needle.

RXQ352. There was the loop already formed, the last loop in the hook, in which you inserted your hook at the beginning of the operation; that you call "one"? A. No; the thread I picked up and brought through the loop on the needle was number one.

1274

And then I did two threads, formed two loops, besides the loop already there. It would not be enough, to show the operation.

RE-REDIRECT EXAMINATION BY MR. ORTON:

I said to Mr. Hodges just now that I did form two loops. That is true. I don't remember just what time he meant. Different times here I formed several loops; I don't know which one he means. In all the operations I have performed, including the operation which you dictated to me, I did actually form more than two loops—I did a number of them.

1275

RE-RECROSS EXAMINATION BY MR. HODGES:

RRXQ359. But you only numbered as high as two? A. You asked me to number them.

RRXQ360. Mr. Orton asked you to number them "one" and "two", didn't he? A. I don't remember.

Deposition closed.

1276 *Affidavit of Vernon Kraft.*

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, INC., Plaintiff, vs. HOSIERY MOTOR-MEND CORPORATION, Defendant.	In Equity No. 48-16.

1277 STATE OF WISCONSIN, }
MILWAUKEE COUNTY, } ss.:

VERNON KRAFT, being duly sworn, on oath deposes and says as follows:

That he is an operator of motion picture machines, located at 220 Wells Street, Milwaukee, Wisconsin, and that as such motion picture operator he took and developed Exhibits 7, 12 and 16 in the above entitled action; that Exhibits 7 and 16 were taken in the presence of Joseph M. Carney, a Notary Public in and for Milwaukee County, Wisconsin, on April 23rd and 25th, 1930, at the studio of Photoart House, 220 Wells Street, Milwaukee,
1278 Wisconsin. That Exhibit 12 contains pictures taken by said Vernon Kraft on June 27, 1929, but not in the presence of the said Notary.

(Signed) VERNON J. KRAFT.

Subscribed and sworn to before me this 3rd day of May, A. D. 1930.

(Signed) W. H. ROBERTS,
Notary Public in and for
Milwaukee County, Wisconsin.
My Commission expires Sept. 10, 1933.
(Notarial Seal)

Notary's Certificate. 1279

STATE OF WISCONSIN, }
MILWAUKEE COUNTY, } ss.:

I, JOSEPH M. CARNEY, a Notary Public in and for the County of Milwaukee and State of Wisconsin, duly commissioned and qualified, do hereby certify that the above named deponents, EDWARD E. BUSEK, J. C. RUEDT, MAY DELEBECK, MRS. HELEN LUELL, and MRS. MARJORIE CONVERSE, witnesses on behalf of the defendant herein, before me appeared on the 23rd day of April, at 10:00 o'clock, A. M., at Parlor F, Schroeder Hotel, Milwaukee, Wisconsin, pursuant to the notice to take depositions dated 1280
April 16, 1930; that the said depositions so taken are to be used in an action now pending in the United States District Court, in and for the Southern District of New York, wherein THE STELOS COMPANY, INC., is plaintiff, versus HOSIERY MOTOR-MEND CORPORATION, is defendant (In Equity 48-16); that at the taking of the depositions, VERNON E. HODGES, ESQ., and HENRY GILLIGAN, ESQ., appeared as counsel on behalf of the plaintiff; FRANK C. STEPHENS, ESQ., appeared in person; that WARREN S. ORTON, ESQ., appeared as counsel on behalf of the defendant; that before testifying each of said deponents, EDWARD E. BUSEK, J. C. RUEDT, 1281
MAY DELEBECK, MRS. HELEN LUELL, and MRS. MARJORIE CONVERSE were by me duly sworn to testify the truth, the whole truth and nothing but the truth; whereupon, on interrogatories by counsel, said deponents made answer as in the foregoing set out; that the said depositions were reduced to writing under my direction; that thereupon said depositions were by the several deponents read and subscribed; that the reason for the taking of said depositions is that the said witnesses reside more than one hundred miles from the jurisdiction where this cause is to be heard.

1282 *Notary's Certificate.*

I further certify that I am not of counsel for, or attorney to, either of the parties; nor am I interested in the result of the cause herein.

I further certify that said depositions were taken on the following days and dates:

Wednesday, April 23, 1930, Thursday, April 24, 1930, Friday, April 25, 1930 and Saturday, April 26, 1930, commencing at the hour of, approximately, 10:00 o'clock, A. M., and continuing to the hour of, approximately, 4:30 o'clock, P. M., with an adjournment during the noon hour.

1283 I further certify that the films, Exhibits 7 and 16, are pictures of the demonstrations which were taken by VERNON KRAFT, photographer at the Photoart Studio, 220 Wells Street, Milwaukee, Wisconsin, in my presence, and that Exhibit 12 contains pictures taken by said VERNON KRAFT on June 27, 1929, as per the affidavit of said VERNON KRAFT hereto annexed, and made a part hereof.

(Signed) JOSEPH M. CARNEY,
Notary Public in and for
Milwaukee County, Wisconsin.
My Commission expires Dec. 28, 1930.
(Notarial Seal)

1284

I also offer in connection with those depositions, the exhibits therein identified, as follows—

The Court: The exhibits have been marked already, so they can be considered in?

Mr. Morris: Do they not have to be marked as admitted, however? My theory of this is,

they not only have to be offered, but ruled upon by your Honor. 1285

The Court: Of course they will, if anybody objects to them.

Mr. Morris: So that the record shows that they are admitted, that is all that is necessary.

Mr. Gilligan: We do not object to the offer of any of these exhibits, possibly except the moving pictures.

The Court: You can take them up at any time. The Clerk is instructed to mark them as exhibits, heretofore marked 1 to 37, and now remarked Defendants Exhibits A-1 to A-37, inclusive.

1286

(Marked Defendants' Exhibits A-1 to A-37, inclusive.)

Mr. Wooster: Exhibits 1 to 17, inclusive, are exhibits referred to in the Milwaukee depositions, just offered.

The Court: Then the Milwaukee depositions are now marked Defendants' Exhibits A-1 to A-17.

Mr. Wooster: I now offer depositions of defendants taken at Clearfield, Pa., June 19 and 20, 1930, before Frank G. Smith, Notary Public, of the following:

Emory J. Gearhart, Irvine F. Miller, Roy G. Shaw, together with the exhibits offered and marked in those depositions, Nos. 18 to 37, inclusive, to be here marked by the Clerk Defendants' Exhibits A-18 to A-37, respectively. 1287

(Marked Defendants' Exhibits A-18 to A-37, respectively.)

1288

IN THE

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

THE STELOS COMPANY, Plaintiff, v. HOSIERY MOTOR-MEND CORPORATION, Defendant.	In Equity No. 48-16.

1289

TESTIMONY ON BEHALF OF DEFENDANT.

Depositions taken on behalf of the defendant, under order of Hon. John C. Knox, dated February 21, 1930 (as modified by stipulation between the parties, dated February 22, 1930), and pursuant to notice and agreement of counsel, before Mr. Frank G. Smith, Notary Public, at the offices of Messrs. Liveright & Smith, Clearfield, Pennsylvania, commencing at 10:30 o'clock in the forenoon on Thursday, the 19th day of June, 1930.

1290

Present:

VERNON E. HODGES, Esq., and
HENRY GILLIGAN, Esq.,
On behalf of Plaintiff;

JULIAN S. WOOSTER, Esq.,
On behalf of Defendant.

The presence is noted for plaintiff of MR. FRANK C. STEPHENS.

DEPOSITION OF EMORY J. GEARHART.

EMORY J. GEARHART, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WOOSTER:

My name is Emory J. Gearhart; I am 42 years of age; my residence is Clearfield, Pennsylvania; occupation, manufacturer of knitting machines and other needlework appliances, such as hooked rug instruments—and inventor. 1292

I have been in the knitting machine business all my life—in touch with a family business, actively in charge of knitting machine manufacture and hosiery manufacturing since 1912, inclusive. May 1st, 1929, I resigned from active charge of the former knitting machine business. Up to the present date I have been consulted from time to time on the activities of the—they are operating two different firms under the same head—and I am consulted repeatedly on both businesses that they are conducting—knitting machine business and rug hooking business.

The name of the business was Gearhart Knitting 1293 Machine Company, founded by Joseph E. Gearhart under the name of J. E. Gearhart, West Decatur, Pennsylvania, about 1897—1887.

The knitting machine was primarily a hosiery hand-power or hand operated knitter for home use, containing numbers of latch needles. Instruction was given by mail and each sale constituted or contained an instruction book for the purchaser's use in learning the operation of the machine and repairing of garments knitted thereon. I herewith produce one of these machines.

1294 *Deposition of Emory J. Gearhart. Direct.*

By Mr. Wooster: This machine is offered in evidence as Defendant's Exhibit 18, Gearhart Knitter.

The principle of construction of Defendant's Exhibit 18 is the same as that of the machine which was being manufactured and sold at the time I entered the business. The scope of work which the machine is capable of doing is practically unchanged.

Without referring to the records which are not
1295 at the present time available, about 160,000 machines have been sold to date. It is estimated that 100,000 had been sold up to January 1, 1920. The machine is still being sold. To my knowledge it has been sold and delivered in practically every civilized country in the world. Some of the countries where I know sales have been made are, Mexico, Central American countries, every South American country, Canada, Norway, Sweden, Iceland, Russia, Japan, China, Africa, India, England. No use my going on—I'll name every country in the globe.

Practically all of the territory just mentioned
1296 has been covered with this machine, up to January 1, 1920. This machine was sold through advertising in American and foreign periodicals. We sold entirely by catalog with the submission of samples of knitting done upon the machine at the factory. We sent the samples by mail.

We had no regularly established service department. Additional instructions were given by various people or employees delegated to do so from time to time. We had no representatives which were sent out from the factory at Clearfield at no time. We had no demonstrators that traveled

around demonstrating the machine. The sales of this machine were practically all by mail based on the advertising and not by personal solicitation.

During the period covered by my connection with the business, there were competing machines of similar type in the market. I recall a number of different brands during the period from the beginning of the business. In England, the Harrison Knitter was a competitor in India; in Canada, Creelman & Company of Georgetown, were competitors with a higher priced machine, but hand operated; the Perfection Knitting Machine Company of Clearfield; the Auto Knitter Hosiery Company of Buffalo; and others. I do not know if any of them are still in the market. 1298

In this hand knitting machine business, attention has been given by the manufacturers of those machines to the repairing of runs that happened during the operation. I have reviewed and studied from time to time all knitting machine books that came to my notice. My instruction books always contained any reference to the repairing of runs. I have seen other instruction books that contained reference to the repairing of runs.

I can produce some specimens of advertising of my machine. I produce a copy of periodical called "Comfort" issued September, 1895, containing an advertisement of the J. E. Gearhart machine, on page 9. Also "Woman's Home Companion" for October, 1897, page 28. Also an advance proof of an advertisement inserted by Gearhart Knitting Machine Company in "McCall's" magazine for December, 1923, which was afterwards printed. Also similar advertisement in "Woman's Home Companion" for December, 1923. 1299

1300 *Deposition of Emory J. Gearhart. Direct.*

STIPULATION.

IT IS STIPULATED by and between counsel that photostat copies of these and other publications may be used, with the understanding that counsel for plaintiff shall have access to the originals and ample time to peruse them, and with the right to defendant to produce the originals in Court at the trial, if obtainable; and with the further understanding that, if there are any parts plaintiff wants photostated, this shall be done by defendant, same
1301 to be offered in evidence by plaintiff, subject to objection by defendant; that ultimately the originals shall remain with Mr. Gearhart, in view of the fact that he has no duplicates; it being understood that, where there are duplicates of any of these publications available, they will be furnished plaintiff.

By Mr. Wooster: Photostats of the above four pages are offered in evidence as "Defendant's Exhibit 19, Gearhart Knitter Advertising".

1302 I recognize the letter dated April 11, 1916, on the letterhead of the magazine "Comfort". It is a letter from W. H. Gannett, Publisher, Inc., Augusta, Maine, signed "W. H. Gannett" with the initial "W". This letter was received in 1916. It has since been in my possession.

By Mr. Wooster: Photostat of the letter is offered in evidence as Defendant's Exhibit 20, letter of April 11, 1916.

Q36. Can you produce any orders showing the distribution and volume of sales of your machine?

A. I herewith produce a bundle of order sheets, starting with Order 3605 of May 31, 1918, and running through Order 5918 of February 26, 1920, this bundle comprising about sixty or more sheets, each having eight orders, and each calling for from one to a number of machines.

By Mr. Wooster: Photostats of only the top and bottom sheets are offered in evidence as "Defendant's Exhibit 21, Samples of Gearhart Machine Orders".

1304 These sheets and others which I have not brought here were kept in the regular order of business.

The book marked "Branson Knitting Machine" by James L. Branson, 505 Chestnut Street, Philadelphia, Pa., overprinted in red, "Removal to 612 Arch Street", is an instruction book in which is disclosed the instructions for operating and mending broken stitches in connection with the operation of a hand-power knitting machine of that company's manufacture.

This particular book was in the records of the Gearhart Knitting Machine Company when I took charge of the firm's operation. It has since been in my possession—since 1912. I find in the book, 1305 on page 23, the following:

"MENDING BROKEN STITCHES.

"This is done with one of the needles of the machine, either in the machine or after the work is out. The needle is used as a crochet-needle. You hook it in the dropped stitch and push it far enough through to bring the stitch below the latch; then draw it back, catching

1306 the next cross-thread above in the hook above the latch; continue to draw the needle back until a new stitch is formed; proceed in this way until all the dropped stitches are knit in. If the mending is done out of the machine, you will tie the dropped stitch with a short piece of yarn and draw the ends inside of the web."

Knitting machine latch needles, with the latch pivoted, are referred to in this book. I can produce a so-called Branson needle, which is similar to the 1307 cylinder needles as used by the Gearhart Companies.

By Mr. Wooster: Photostats of the title page and page 23 of the Branson book are offered in evidence as "Defendant's Exhibit 22, Pages from Branson Book".

By Mr. Wooster: The latch needle produced by the witness is offered in evidence as "Defendant's Exhibit 23, Sample of Gearhart Pivoted Latch Needle."

The records are not available to prove the design of the particular Gearhart pivoted latch needle re- 1308 ferred to. The original was purchased from the William Corey Company of Manchester, New Hampshire, about 1890. I have been familiar with this design of needle as long as I can remember. It has been manufactured by William Corey Company and the Torrington Company.

I can and herewith do produce specimens of the instruction books and literature which my company and its predecessors got out. I refer to a publication on "Instructions for Using the People's H. S. Knitting Machine Manufactured by Cardon & Gear-

hart, Dundas, Ontario, Canada". The above-named company was composed of my father, J. E. Gearhart, and a Mr. Cardon for Canadian manufacture and sales, and was in active operation on or about 1892 in Canada.

On page 6 of this publication instructions are printed under the heading "Mending Broken stitches".

The outside cover does not enable me to state the period when that design was marketed or when it was discontinued. The machine pictured on the cover is of a model of machine made prior to 1891. 1310

By Mr. Wooster: Photostats of the cover page and of page 6 are offered in evidence as "Defendant's Exhibit 24, Pages from Cardon & Gearhart Instruction Book".

I produce another publication entitled "Instructions for using the People's H. S. Knitting Machine Manufactured by J. E. Gearhart, Clearfield, Pa." On page 6 there are published instructions under the heading "Mending Broken Stitches", which is a duplicate printing of the instructions contained in Exhibit 24. There is a record written on this instruction book,—"1894". The name, "J. E. Gearhart", appearing on the book, indicates it was used during and before that date. A short time after this date the name of the company was changed to J. E. Gearhart & Son. I was not the "Son" in that firm. My brother, Leonard A. Gearhart, was the son mentioned. 1311

That book was kept in a scrapbook where other records were kept, and its position indicated the date, which I recorded on the face of the book. I don't recall when this record was made on the book.

1312 *Deposition of Emory J. Gearhart. Direct.*

By Mr. Wooster: Photostats of the cover and page 6 of this book are offered in evidence as "Defendant's Exhibit 25, Pages from J. E. Gearhart Instruction Book for People's H. S. Knitting Machine".

I present a publication entitled "Instructions for Using Gearhart's Improved Family Knitting Machine Manufactured by J. E. Gearhart, Clearfield, Pa." On page 11 instructions are printed, under the heading "Mending Broken Stitches", which in-
1313 structions are virtually the same as printed in the two previous exhibits. The writing on the cover and the cut of machine indicate that the publication was used or distributed about 1896. The handwriting is mine. I don't recall when that was placed on it.

The cuts used in illustrating the machine on the covers of the instruction books were cuts which were available for use as models of machines were changed or improved from time to time.

By Mr. Wooster: Photostats of the cover and page 11 of this book are offered in evi-
1314 dence as "Defendant's Exhibit 26, Pages from J. E. Gearhart Instruction Book for Gearhart's Improved Family Knitting Machine."

I present an instruction book which is a publication entitled "Instructions for Using Gearhart's Improved Family Knitting Machine Manufactured by J. E. Gearhart & Son, Clearfield, Pennsylvania." On page 11 are printed instructions, under the heading "Mending Broken Stitches," which instructions are virtually the same as in the Exhibit 26. The name "J. E. Gearhart & Son," on the cover indicates that

this publication was distributed about and after 1896, as this company succeeded the J. E. Gearhart, Clearfield, Pa.

By Mr. Wooster: Photostats of the cover and page 11 of this book are offered in evidence as "Defendant's Exhibit 27, pages from J. E. Gearhart & Son Instruction Book."

I present a publication containing instructions for using the Gearhart Family Knitting Machine for the knitting of garments such as hosiery and the mending of broken stitches. I identify this book 1316
under the name "Gearhart Knitting Machine Co., Clearfield, Pa." as a publication which was distributed in connection with the sale of the Gearhart Knitting Machine under my direction during and after 1912. On page 14, under the heading "Mending Broken Stitches," the following is printed:

"This is done with one of the needles of the machine, either in the machine or after the work is out. The needle is used as a crochet needle. You hook it in the dropped stitch and push it far enough through to bring the stitch below the latch; then draw it back catching the 1317
next cross-thread above in the hook above the latch; continue to draw the needle back until a new stitch is formed; proceed in this way until all the dropped stitches are knit in. If the mending is done out of the machine, you will tie the dropped stitch with a short piece of yarn and draw the ends inside the web."

The records available indicate that this book was used, with slight revision as to other parts of the instructions than the mending of broken stitches,

as copy for printers to follow in the publication of three instruction books, which I present, in languages, namely, Swedish, Norwegian and German. The former two were printed by the N. Fr. Hansen Publishing Company, Cedar Rapids, Iowa, in 1913. I have written this record on the cover of these two-mentioned books. I assume, because of the foregoing testimony, that on page 14 the same instructions for mending broken stitches are printed as contained in the English publication referred to in this answer.

1319 The publication in the German language does not have any handwriting on the front cover, but the knitting machine illustrations and the positions of the illustrations indicate that it is a duplicate of the text contained in the English instructions referred to above. The design on the cover is of a model of knitting machine which was manufactured and sold prior to 1914. This book was printed under my direction on or about 1913.

By Mr. Wooster: The witness has referred to four books, and I offer as one exhibit photostats of the cover and page 14 of each, to be marked "Defendant's Exhibit 28, pages from
1320 Gearhart Knitting Machine Co. Instruction Books in Swedish, Norwegian, German and English." I will offer certified translation as part of this exhibit.

These books were distributed with each knitting machine in the country or countries where the machines were sold and delivered. They were also sold separately. People sent in separate orders or included orders for additional instruction books with their orders for parts and supplies. More in-

struction books were sold separately than were distributed with the knitting machines sold. I do not know how many more were sold separately than the number of machines sold.

I present a publication containing instructions for operating the knitting machine for manufacturing various garments, such as hosiery, with instructions printed therein how to mend broken stitches, and which was printed by the Drukiem Braci Worzallow, Stevens Point, Wis., under my direction, in Polish, about 1914. This is identified by the illustration of the new 1914 model knitting machine on the front cover. On page 17, paragraph 2, the instructions for mending broken or slipped stitches are printed, a certified translation of which is to be presented. 1322

By Mr. Wooster: Photostats of the cover and page 17 of the Polish book and a certified translation of page 17 are offered as "Defendant's Exhibit 29, pages from Gearhart Knitting Machine Co. Instruction Book in Polish."

Because of the World War there was a demand created for hand knitting machines, and because of that demand we were asked to manufacture an increased number of knitting machines to supply that demand. We were classed as a necessary war industry. We got priorities for the purchase of merchandise. We did not get priorities on foreign shipments of machines. At the maximum period of our business we required possibly two and a half million needles per year. During the war years, I recall that one year we had on order one and a half million for delivery times during the year as we might require and could get deliveries. 1323

I recall I was personally classified in the draft as 3-A, which was interpreted as a necessary employee of a necessary war industry, conceded the highest classification.

Other activities of my company during the war were the sale of yarn for the purpose of supplying Red Cross Chapters and individuals who were working for the interest of—in the cause of the war—in knitting socks for soldiers.

During my connection with the company, it sold hand needles. They weren't constructed. They
1325 were purchased to resell to individuals who didn't seem able to get them direct from the manufacturers. We sold hand latch needles. I knew about it from helping to write up orders and in view of hearing conversation, when I was active in the summer months between the school terms in working in the office and the factory before 1912. That practice continued up to the time of my severance with the concern, May 1, 1919. Those hand needles were sold for from 15 to 50 cents, as I recall, and the purpose of reknitting runs or slip stitches in knitted goods. We would receive an order for a hand needle and then fill it. They were sold in the general course of business to our customers who might
1326 be located anywhere—no specific place.

The hand needles we sold differed from Exhibit 23 in that we would remove the heel and solder or fasten an extended handle out of wire, to the end of the shank.

I have not searched for any further copies of instruction books published during the war period and immediately thereafter, through 1919. It is my recollection that some were published subsequent to 1914 and prior to the end of 1919. I could not state how long it would take me to find them.

We published some in 1920, and I have one available.

I present a publication entitled "Instructions for Operating the Celebrated Auto Knitter—Model B—Sold in All Countries." We published this to include with knitting machine orders for the account of the Auto Knitter Hosiery Co. of Buffalo, New York, for whom or for whose account the knitting machines were being manufactured and sold in 1920. The contents of this published instruction book was revised somewhat in accordance with instructions for the Auto Knitter Hosiery Company, 1328 but not the paragraph on page 16 under the heading "Mending Broken or Slipped Stitches," which instruction under this heading remained the same as in the instruction books which were then being published and distributed by the Gearhart Knitting Machine Co.

This publication was printed, delivered to our company and distributed with the Gearhart Knitting Machines in 1920, while we were occupying a building located on Nichols Street, Clearfield, Pa., during that year.

By Mr. Wooster: Photostats of the cover and page 16 of this instruction book are offered 1329 in evidence as "Defendant's Exhibit 30, pages from Auto Knitter Hosiery Co. Instruction Book for Model B."

We next printed and distributed an instruction book that same year—1920. As customary with the Gearhart companies, instruction books were published as the company anticipated their being required. The instruction book I present is called "Instructions for Operating Gearhart's Knitting

1330 *Deposition of Emory J. Gearhart. Direct.*

Machine—Special Work and Family Outfit and All Standard Machines. Price by mail 50 cents." It bears a date of October, 1920, which was the date that the printer was ordered to inscribe on the front cover to identify its printing date. A ruling or order which I gave to the printers specified the imprint of the publication date to be placed on the literature, and this order was never rescinded thereafter to my knowledge.

1331 It was the general practice of the Gearhart Knitting Machine Co. to include a knitting machine instruction book, which contained not only the instructions for operating the machine but the instructions for making knitted garments, including hosiery, with instructions for mending broken or slipped stitches. Instructions were never printed in any large quantity in book form, due to the possibility of their requiring revision in certain parts of their contents, and the proof of this assertion I present in giving a subsequent instruction book, which was published March, 1921. This latter publication, March 1921, was published in order to supply the firm with enough books to finish out their fall and winter knitting machine sales season.

1332 The printer, Kurtz Brothers, Clearfield, Pa., usually kept all instruction book text set up in type and paged, subject to being used on short notice from the Knitting Machine Company for further printing. It was our practice for years not to have large stock of printing in our offices, because of the close proximity of the printers to our factory and their willingness to hold all copy in type form subject to our printing orders, so that we usually did not order new printing to be made or publications to be printed until we were almost or entirely out of such stock.

1333

I cannot say definitely how close to the printing dates copies of the two blue covered books I have just referred to, were distributed, excepting through the general practice of the concern, just stated. The book dated October, 1920, was distributed first. It was a general practice of the firm to use up what literature was on hand before new orders of the same print was delivered from the printer, or as above asserted. I have no definite record that copies of this book dated October, 1920 were distributed before March 1921. I have personal knowledge that copies of this book dated March, 1921, were dis- 1334
tributed after they were printed and received by me.

In the nature of our mail order business, the active season of the year when knitting machines were sold and shipped in greatest numbers fell between September 1st through the fall and winter to about April 30th. The firm always got knitting machine orders after March, with which instructions were included, in addition to instructions which were sold to customers through the supply department.

The book dated October, 1920, was, to my knowledge, actually distributed to the public. I cannot 1335
name a definite date when it was first distributed. An approximate date was soon after the date indicated on its cover as its having been published. The book dated October, 1920, would have been distributed before March, 1921. I don't know definitely when the book dated March, 1921 was first distributed to the public—approximately within a few days after they were delivered by the printer, during March or early April, 1921.

We next dated an instruction book November 1st, 1921. It was our custom to use all printing on hand, or almost entirely all, before new printing

was obtained; and the next publication of the instruction for operating the Gearhart Knitting Machine bears a date on the cover, November 1, 1921, which is approximately two months after the active knitting machine sales season started.

From one thousand to five thousand copies were ordered for each dating. It was our practice not to order another dating until the copies of the previous dating were all gone or approximately all gone.

1337 By Mr. Wooster: Photostats of the cover page, page 10, and page 16 of the instruction books dated October 1920 and March 1921 are offered in evidence as "Defendant's Exhibit 31, Pages from Gearhart Knitting Machine Co. Instruction Books of October 1920 and March 1921."

I cannot say whether the instruction book for Model B Auto Knitter, Exhibit 30, dated on the cover "1920" was distributed before or after the one dated on the cover "October 1920" of Exhibit 31, because they were shipped to another firm for distribution, whose records I do not have. I haven't any direct evidence of the day and date they were
1338 printed to present here. The cover stock used in the October 1920 and the March 1921 instruction books was not durable enough to withstand the hard usage that the instruction books received in shipping with the machine and the use by the customer, so it was decided to have a more substantial cover, which appears on subsequent instruction books.

The book dated November 1, 1921 was printed on the date indicated on the cover and distributed immediately or soon thereafter. I do not note any changes in contents as between it and the two pre-

vious issues as to the descriptive matter on page 10 and the matter on page 16 relative to mending broken or slipped stitches.

By Mr. Wooster: Photostats of the cover page, page 10, and page 16 of the instruction book dated November 1, 1921, are offered in evidence as "Defendant's Exhibit 32, Pages from Gearhart Knitting Machine Co. Instruction Book dated November 1, 1921."

In 1922 I decided to rewrite our instruction book 1340
and publish therein only the very essential parts of the instructions which directly related to the customer's learning the names of the parts of the machine and include large and clear illustrations of the mechanical parts of the knitting machine, and confine instructions on the process of knitting various garments and explanations of knitting terms to separately published inserts and literature, I present one of the published inserts, bearing date 1924. The title of this published insert is, "Picking up a dropped Cylinder Stitch While Knitting is on the Machine," with illustrations and Instructions.

I interpret the instructions in the same manner 1341
as the previous instructions.

By Mr. Wooster: Photostat of the leaflet just referred to by the witness is offered in evidence as "Defendant's Exhibit 33, Printed Leaflet of Gearhart Knitting Machine Co. 1924."

I present a print showing for illustrative purposes the Gearhart machine partly assembled.

By Mr. Wooster: Photostat of the print produced by the witness is offered in evidence as

1342 *Deposition of Emory J. Gearhart. Direct.*

"Defendant's Exhibit 34, Print Entitled 'Assembly of Machine—Picture 2'."

In the process of knitting all kinds of garments on the knitting machine, including hosiery, it is necessary and essential that the knitting as being completed by the needles be held in a stretched manner, usually by the hanging of a weight or series of weights to the knitting underneath the machine.

When reknitting runs while in the machine, the
1343 use of the weights on the knitting is optional to the mender whether weights are to be used to stretch the knitting or the hand. It is not possible, by any method known to me, to repair a run without stretching the knitting.

I have many times personally had occasion to reknit a run, I always used a pivoted latch needle, usually one of the same kind of needles as was used in the knitting machine cylinder and proceeded always to carefully follow the instructions as appeared in the Gearhart Company and other published instruction books. In the process of knitting garments, including hosiery, when a run or raveling occurred in the knitting while still on the
1344 machine, or off, I reknit or relooped the run or the slipped stitches as soon as found convenient, in the following manner:

Q125. Referring to the machine, Exhibit 18, please make a run by removing one or more yarns from the needles on the pink knitting now in the machine. A. I have made a run of about 1¼ inch in the knitting now on the machine.

Q126. Please now take the first step to reknit the run, and state what you do. A. I insert the knitting machine pivoted latch needle hook in the last

loop of the run and push it far enough through so that the loop around the needle passes down and off the end of the pivoted latch.

I withdraw the needle by a reciprocating action, which causes the latch to force into the open hook the next forward cross-thread, thereby forming a new loop through the action of the loop thread forcing the latch shut on the needle hook. By a reciprocating method I re-insert the needle through the knitted fabric in the run and repeat my reciprocating movement, holding the needle in any convenient or necessary angle to the plane of the run, 1346
either in alignment or so-called out-of-alignment, to reknit or restore the cross-threads in their original position while the knitting is held in a stretched condition to the cylinder needle upon which the original dropped loop began.

I have now reknit the loop or series of cross-threads—sometimes called a "ladder"—and placed the last completed loop on the needle while holding the needle with the pivoted latch at various angles to the plane of the knitting in a stretched condition.

In the reknitting I have just done the fabric was stretched in a suitable holder with the assistance of my left hand. By "suitable holder" I mean 1347
the knitting being in the knitting machine in a stretched condition to a certain degree. When a run was reknit out of the machine, I followed the instructions which I have stated by tying a small piece of thread through the last loop to secure it. When I reknit the run out of the machine, the fabric was stretched in various ways, depending upon the machine, the fabric was stretched in various ways, depending upon the nature of the run and the kind of material in which the run or the slipped stitches occurred.

I have practiced the method of closing or reknitting slipped stitches or runs by holding the knitted fabric containing the run in the manner most suitable; as, for instance, a stocking or half-hose is placed on a stocking or sock form and held away from the form where the slipped stitches appeared with the left hand sufficient to permit the use of the pivoted latch needle in the manner which I have always practiced, which I am willing and able to demonstrate.

The purpose of holding the run away from the
1349 surface of the board rather than leaving it flat on the board is to permit the insertion of the needle hook through the material to obtain a reciprocating action of the needle. I have personally practiced, from time to time since 1912, the reknitting method described in the Gearhart instruction books and, as just explained by me with the piece on my machine and the description I gave of how I do it on a board.

When our factory made hosiery, runs occurred in course of manufacture. They were repaired by reciprocating movement of the hand holding the needle-pivoted latch needle. We did not hire regu-
1350 lar menders who did that. In our inspection department or finishing department, the mending was done by girls who might be delegated to do that.

Q140. What kind of a needle did they use to do it, and how did they do it? A. They did it in various ways which would be convenient for them in so far as holding or a stretching the material, but always with a reciprocating or pump action of the hand holding that pivoted latch needle for the Gearhart make.

By Mr. Hodges: The answer is objected to as a description of what someone else has done and not anything the witness has done.

I have seen both men and women in our knitting machine plant reknitting raveled stitches or runs, from time to time.

By Mr. Hodges: Same objection, with the added objection that this is not the best evidence.

company always manufactured, as far back 1352
as I can remember, some hose, but not in a big way for commercial purposes until 1919. The company paid for the kitting of hose which were actually knitted by customers located in various parts of this and other countries. All of our customers, in so far as we knew, were using our manufacture knitting machine, which, of course, was required by them to use.

Q144. During the period of your connection with the company, dating from 1912, to your knowledge did any inquiry ever come to you that the instructions in your book for reknitting were defective or incomprehensible or insufficient to enable 1353
your customers to reknit the runs as directed?

Mr. Hodges: The question is objected to as leading and incompetent.

A. Not to my knowledge.

Q145. If any such complaint had come in, would it have come to you?

By Mr. Hodges: Same objection.

A. It would have come directly to me or would have been called to my attention for the proper reply.

Such complaints would have had effect on the reknitting directions that were published from time to time in our instruction books. We would have attempted to have made a revision to more clearly describe the published method then contained in the books.

As active manager of the Knitting Machine Company since 1912, I made it my business to secure and review not only knitting machine instruction
1355 books but to secure actual models of hand-operated knitting machines, and in my pursuance of this custom I delegated an employee to place an order with the Auto Knitter Hosiery Co. of Buffalo some time prior to 1921 and secure a knitting machine for the purpose of learning exactly how they filled their orders and what they filled them with or included in their advertised knitting outfit. This book marked "The Auto Knitter Instruction Book—Sixteenth Edition" and marked on the first page inside the cover "Copyrighted 1920" etc. was the publication received from the Auto Knitter Hosiery Company with the knitting outfit and has remained
1356 in my possession and was available to me at all times.

I cannot say as to the day and date when the machine and the book were received by me—approximately the Fall of 1920 or Spring of 1921. This book contains reference to repairing a run, on pages 20 and 36. On page 20 part of the heading at the top of the page has been cut out and removed for the purpose of securing an illustration appearing on the reverse side of the page, which is page 19. The part remaining immediately following the cut-out portion reads as follows:

"• • • end first, between the work and the cylinder, with the hook pointing inwards towards the work. Pass the left hand up inside the cylinder from underneath the machine. Take hold of the work and bring the dropped stitch within the reach of the needle hook. Get the stitch onto the hook, being careful not to slip the wool (believe to be a typographical error—instead of 'slip' should be *split*), slide the needle through the stitch until the stitch is behind the latch, then turn the needle a quarter turn to the right, pull it slowly back 1358
until the latch stands out almost straight but not quite, the stitch still being behind it. Then work the latch up behind the yarn immediately above the stitch. This done proceed to draw the needle slowly back and the latch will take the yarn inside the hook, allowing the old stitch to slide over and thus forming the new one. Having now a new stitch inside the hook, slide the needle through the work again until the stitch is behind the latch, and repeat the whole operation until you get the stitch to the top, when it must be placed on its cylinder needle.

1359

"If the ribber is in use when the stitch slips off the cylinder needle, the ribber needles must first be taken out, as directed on page 36 and the complete ribbing attachment removed."

Referring to page 36, under the heading, "Picking up Rib Stitches," the following is printed:

"This is done on the same principle as explained on page 20 except that, of course, it is done from the inside of the work instead of

1360 *Deposition of Emory J. Gearhart. Direct.*

the outside. All of the ribber needles must be taken out of the dial and left hanging to their stitches, outside the cylinder. The complete ribbing attachment can then be removed as to allow free access to the work."

By Mr. Wooster: Photostats of the cover page, the first inside page, and pages 20 and 36 of the book just testified about by the witness are offered in evidence as "Defendant's Exhibit 35, pages from Auto Knitter Instruction Book 16th Edition."

1361

I was asked to testify as a witness in another case on the Stephens patent here in suit, re-issue 16,360, pending in Philadelphia, entitled "The Stelos Company vs. Runner Needle Co., Inc." I was asked to testify by Mr. Harold Olsen, by letter, and personally. I can produce the letter. I present a letter dated December 7th, 1929, on the stationery of Morrison, Kennedy & Campbell, Washington, D. C., signed by Harold Olsen, with the initials "HO:B", which was received by me promptly as the mails function.

1362 By Mr. Wooster: Photostat copy of the letter produced by the witness is offered in evidence as "Defendant's Exhibit 36, Harold Olsen letter of December 7, 1929."

I have another letter from Mr. Olsen; that, to my knowledge, contains a similar hand-written signature. I have no reason to believe that that letter was not written and signed by Mr. Olsen. I met Mr. Olsen in Clearfield, first; he came to see me about testimony in a suit of the Stelos Company against the Runner Needle Company of Philadel-

phia. I prepared to testify. I do not know whether he saw anyone else while here.

I went to Philadelphia to testify in that case about January 5, 1930. Mr. Irvine Miller went with me. He went to testify also. He is the Mr. Irvine Miller who has been noticed as a witness to testify here, after me. That case was not tried in Philadelphia, to my knowledge. Mr. Miller and I did not testify in Court. I met Mr. Wooster while in Philadelphia on that occasion. I did not introduce him to Mr. Miller. Mr. Olsen did. He also introduced him to me. I understood it was in this 1364
case in which I am now testifying that, on that occasion, he asked Mr. Miller and me to testify. He told me it was a case in which he was interested.

I do not recall his stating to me that he would take such testimony of Mr. Miller and myself on that date or the next day, in Philadelphia, if Mr. Hodges and Mr. Gilligan would agree to accept short notice. He told me that he couldn't obtain any further information from those present, including Mr. Gilligan, Mr. Hodges and Mr. Olsen. The Mr. Gilligan and the Mr. Hodges I mention are the two gentlemen here present.

Adjourned to Friday, June 20, 1930 at 8:30 1365
o'clock A. M. at the same place.

1366 *Deposition of Emory J. Gearhart. Direct.*

Friday, June 20, 1930, 8:30 A. M.

(Met pursuant to adjournment.)

I did not complete my testimony regarding the methods practiced by myself and others in my plant, prior to 1920, for holding goods out of the machine while repairing a run.

Another method of holding the knitting and stretching it was over a cylinder-needle box or any other box that might be available. On the work-
1367 bench we usually had cylinder-needle boxes containing needles that were used in the operation for supplying needles for the machine and these were usually immediately available:

I would take the knitting, whether it was flat-web knitting or hosiery, such as socks, and insert the needle box—usually the lower half of the bottom of the box—inside of the knitting and stretch the run or the cross-thread slipped stitches over the open top of this half box, insert the needle hook in the lower loop of the run, and proceed to close the series of slipped stitches of the ladder by the processes described in the Gearhart instruction books
1368 and as interpreted by my testimony yesterday.

In working over the open top of the needle box, no particular position of the needle relative to the run was adopted. It was the practice to take any position that was comfortable or convenient or a position that would result in faster work, holding the latch needle at any suitable and convenient angle that might have been selected.

It wasn't my practice to mend hose as a profession or as a regular duty. It was only through working on hose and other knit goods in the way of experimenting with the results of the machine

and the operation of the machine that I had occasion personally to repair or reknit runs.

Very often I have seen in the shipping and inspection and repair departments of the mill, girls use their hands as a holder for the hose, stretching the hose over their left hand, inserting a needle—a latch needle—in the loop at the end of the ladder or series of slipped stitches in such a manner that the run could be repaired or the cross-threads reknit by the latch needle by a plunging method, which is the only method I have ever seen of repairing of hosiery or knit goods runs done.

1370

The firm started to manufacture or have manufactured hosiery for commercial purposes about 1919 and 1920, and in 1920 I employed help for the purpose of inspecting and repairing, boarding and shipping hose to the market, and from that time on until 1925 that activity was continued.

In every instance, so far as I can recall, instruction books were given to girls or those who were delegated to have anything to do with knitting to study, read over, and get what they could from its contents, and then, if there was anything that remained unexplained or was not clear to them, there were a number of associates who would possibly tell them, or show them. I don't know that that applies to the reknitting of runs or restoring of runs. To my knowledge, I don't know that anyone ever showed any one other operator or employee how to do it by a personal demonstration. To my knowledge the employees who did the mending got their knowledge from the instruction books and by practice.

1371

1372 *Deposition of Emory J. Gearhart. Cross.*

CROSS EXAMINATION BY MR. HODGES:

I am not prepared to say that the several instruction manuals referred to in my testimony and offered as exhibits are all of the different reprints that were printed and sent out by me or my company. I haven't any definite information or evidence in my possession as to how many other editions were sent out and what years. I could not get this information quickly because the former Gearhart Knitting Machine Company has ceased
1373 operation as a firm in 1925. I do not have access to their documents or papers.

XQ196. Who published the "Knitting Manual of Instructions and Sales—1927—1st Edition"?

By Mr. Wooster: That is objected to as outside of the direct examination and not proper in this case.

By the Witness: Well, I understand the question. I will require a copy of the book referred to, to identify it.

I personally supervised the compilation of the entire book entitled "Knitting Manual of Instruc-
1374 tion and Sales—1st Edition" compiled by Clearfield Knitting Machine Co., of Clearfield, Pa., with copyright mark 1927 on the first page inside the cover.

By Mr. Hodges: The Examiner is asked to mark this book "Plaintiff's Exhibit for Identification B". (So marked.)

By Mr. Wooster: Same objection.

XQ198. There is considerable change in the matter of instruction for repairing runs, isn't there,

over the former instructions which you testified about in your examination-in-chief? A. I don't recall that there is any instruction in this "Knitting Manual of Instruction and Sales" for repairing runs.

The quotation on page 10 under the heading "Runner Reknit":

> "When a runner is caused accidentally a regular single cylinder needle is held in the fingers and used to reknit or reloop the yarn."

is different from the passages in the other manuals 1376
in so far as it is very brief. It was made brief because this "Knitting Manual of Instruction and Sales" was not given or offered or sold for the purpose of teaching or instructing people how to use the knitting machines but for a clear understanding of the names of parts. In connection with the distribution of the "Knitting Manual of Instruction and Sales" with the sale of the knitting machine, the regular instruction book then in use accompanied any shipment of machine.

On page 10 of the book, the page is headed by the caption "Explanation of Knitting Terms". The tenth sub-head on this page merely names "Runner 1377
Re-Knit", and briefly explains what is meant by the term. There is no attempt made in the explanation of this term to fully and completely instruct.

The page of Exhibit 33 was first sent out during or before the year 1924. It was also sent out in another form in connection with an additional instruction in pamphlet form with special instructions on how to properly knit what was called "Wool Laddy" hose. It was a trade-marked hose which we specialized in having made, but not nec-

essarily a new hose. It was of the same type of woolen hose that we had made previously, not any great numbers of years commercially, but there had been hose somewhat similar, from time to time, made by our knitting machine. The two different types of hose differed by the color of the body and the decorative top. The stitches did not differ.

It was decided to illustrate the method that is illustrated in this referred to Exhibit 33 in addition to illustrating many other parts of knitting. Therefore, there was no particular reason in mind
1379 excepting general. This was the first attempt at illustration I had ever sent out of the reknitting of a run to the best of my knowledge. Copies of Exhibit 33, to my recollection were not sent out earlier than 1924, in this form. It was first sent out in any form during the year 1924 or before. I have no record of how much before 1924 it was sent out. It could not have been as much as a year before because it bears the trade-mark sign or symbol and date 1924 as shown by the copyright mark on the bottom of the Exhibit. That is an indication that copies of this specific exhibit were sent out first in 1924.

I am not sure that the first time I ever sent out
1380 an illustration of the operation of a needle in repairing runs was in 1924 because I haven't any complete record of mailing dates on any other piece. To my knowledge, this particular Exhibit 33 was not copyrighted. The mark at the lower left hand corner indicates to me a printing date. I am aware that the little "C" inside of an "O" is a copyright sign. It was put there because you are supposed to put the symbol, date, initials or name on the first printed pieces. 1924 was the first date of circulation of that page—Exhibit 33.

I am not prepared to furnish a book published prior to Exhibit 33 that showed similar cuts with the same instructions. It is not fair to assume this was the first publication of those cuts and instructions. Without the records before me, I can't state how much before that I might have sent out similar instructions. In the absence of records, I refuse to answer, without an order from Court, that I did not send out instructions prior to that date. I have no further records with me.

Exhibit 33 went out in pamphlet form—a six page folder. The cuts as illustrated in Exhibit 33 1382
were sent out as near as I can recall, in page form —in what I called a pamphlet or a folder of six pages. I also sent it out in a book similar to Plaintiff's Exhibit B after it was sent out in the form of Exhibit 33. The book I refer to was partly printed during 1924 or 1925 and in stapled form. After the change of ownership of the former Gearhart Knitting Machine business to the Clearfield Knitting Machine Company, a quantity of these mentioned instruction books were torn down and reconstructed to include Exhibit 33 in page form —about 1926. I directed the compilation of it and will furnish you with one this afternoon.

1383

Recess.

AFTER RECESS.

In my search at the noon hour, I found, among other things, the instruction book for the Gearhart Family Knitter manufactured by Clearfield Knitting Machine Co., Clearfield, Pa., U. S. A. as stated

on the front cover. On the front cover it reads "1926-1927 Instruction Book for the Gearhart Knitting Machine—Copyright 1923" and a picture of the office and factory of the Clearfield Knitting Machine Co. Clearfield, Pa. On page 21 I find a facsimile of this Exhibit 33, with the exception that the copyright symbol and the date 1924 and the name Gearhart Knitting Machine Co., Clearfield, Pa., does not appear in the book. To the best of my knowledge all instructions are identical as to cuts and descriptive matter. I don't know of any
1385 particular reason why we found it necessary to describe and illustrate this operation so particularly at the date 1926-1927. I know of no indication that it was because my former instructions were not regarded by the purchasers of machines as sufficient to teach them how to repair runs. We had no complaints or criticisms by letters or otherwise.

By Mr. Hodges: I will ask the Examiner to mark this book which has been referred to as "Plaintiff's Exhibit C for Identification".

In my noon-hour search of records I am now able to establish in my mind the publication and dis-
1386 tribution of Exhibit 33 in the pamphlet or folder form which was requested, as 1924. I now produce the book. It is called "Instructions for Knitting Children's Fancy Sport Hose with Turn-Down Cuff", issued by Gearhart Knitting Machine Co., Clearfield, Pa. On page 6 there is reprinted a facsimile, to the best of my knowledge and belief, of the Exhibit 33, and bears the copyright symbol 1924—Gearhart Knitting Machine Co., Clearfield, Pa.

By Mr. Hodges: I will ask the Examiner to mark the pamphlet referred to for identification as Plaintiff's Exhibit D.

It has served to refresh my memory as to its existence and issuance. The instruction books published by the Gearhart companies contained instructions for mending broken stitches while the knitting was either on the machine or off, implying that the same instructions followed to be used in either way. I did not, under a separate heading, explicitly describe things I have testified to about the repair of a run when not on the machine in 1388
any of my printed literature. I don't recall that I ever used the terms "stretch" or "stretching"; "punch" or "punching" or "reciprocating" or "plunging" in any of my printed literature.

In my noon-hour search, as I have previously mentioned, among other things I found "Instructions for Operating the Gearhart Sock Knitting Machine" which title appears on the front page, "Price, 50 cents"; on the first frontispage appears "Instructions for Operating the Gearhart Sock Knitting Machine by Miss Ada Weiner—Drawings by Mr. Franz E. Zerrahn—Dedicated to the Serbian Distress Fund 5 Boylston Place, Boston". 1389
At the bottom of the page it reads: "Boston—Printed for the Author—1918". On the reverse side of this page appears "Copyright, 1918—By Miss Ada Weiner".

On page 20 the following printing appears in this publication, under this heading:

"To Pick Up Plain Stitch, use cylinder needle which will work similar to crochet hook. Push needle down between work and cylinder

1390 *Deposition of Emory J. Gearhart. Cross.*

and catch stitch. Push needle through stitch until tongue is free. Draw needle back allowing tongue to close over yarn above, which will form stitch. Replace on needle."

Immediately following is a second paragraph with the heading:

"To Pick Up Ribbed Stitch, catch stitch inside work. Push needle upward freeing tongue and catching yarn above at the same time. Draw yarn through stitch. Replace on needle."

1391

The Auto Knitter Instruction Book, Exhibit 35, referred to by me in previous testimony, contains instruction on page 20 as follows, which is part of the entire instruction on that page:

"This done proceed to draw the needle slowly back and the latch will take the yarn inside the hook."

In Figure 3 of Exhibit 33 the needle appears to be upside down—that is to say with the hook end down and the handle end up. That is what is meant by "pull back up" in the paragraph in Exhibit 33, because the work drawing appears on this exhibit, disclosing that fact. I interpret it that it means turning the needle on its side as shown in Picture 3; that is to say, you turn the needle axially to one side.

1392

The statement "Place cylinder needle down between the knitting and the cylinder under all of the dropped stitches," doesn't mean on the under side of the fabric, because that is the outside of the

fabric when the fabric is off of the knitting machine.

In this case the fabric is not lying on a flat plane but practically perpendicularly alongside of the upright cylinder and the needle is parallel with the fabric. These are pen and ink sketches and do not indicate that the needle is touching any of the unknitted cross-threads excepting the cross-thread adjacent to the thread being looped. In performing this operation by reknitting a run beneath the ladder and between the fabric and the needles, the repair needle is close to and very often touches the 1394
unfinished ladder.

The page of instruction shown in Exhibit 33 is not intended for one of the ribs that would project up inside of the knitted tube, or on the outside —the side toward the cylinder needles. I claim the needle does not rest under the fabric but between the fabric, and the cylinder, in these instructions. To reknit loops or close a run and to replace the cross-threads as the needle knit or looped them together originally, it is necessary to operate the needle in the same manner as the needle in the machine, originally constructed the loops.

I first heard of the Auto Knitter Hosiery Co. 1395
about 1914. We never made them a distributor of our machines anywhere. They purchased machines outright without our assuming any obligation except to fill the orders according to their instructions. We printed and sent them Exhibit 30 in 1920. I first saw Exhibit 35 on or about 1920, during the same year I furnished them Exhibit 30, but the Auto Knitter Hosiery Co., published and distributed instruction books prior to this date, copies of which I know about, but do not have in my possession. I am sure these two with their

names attached are not the only ones I have had. They are the only ones I have access to at this hearing. I haven't others in my possession to my knowledge but I believe I can secure others. To my knowledge Mr. Wooster never saw or had any knowledge of the Auto Knitter Instruction Book. The machines illustrated in Exhibit 35 are not of Gearhart manufacture.

I do not agree that all of the instructions I have quoted refer to putting the needle between the cylinder and the fabric. The first statement in any
1397 of this printed literature previously referred to in my testimony wherein the statement is made that the reknitting needle is placed between the knitting and the cylinder is in the Weiner book which I produced after lunch, on page 20. This book is dated by copyright mark 1918 and is the first book in which I have found this particular difference in relation to the question, in so far as I have searched the books in giving answer at this time to the question. I can continue my search for further differences if required.

I do not consider myself as specially skillful in reknitting runs, therefore, do not want to give the impression that my demonstrations could not be
1398 done without looking at the action of the needle in the process of reknitting the run. With the fabric still in the machine, with this woolen yarn, my observation has been that the cross-threads are usually stretched far enough apart so that they are easily distinguishable one from the other and the operators watch their work, which is only natural, instead of looking elsewhere.

We often have more than a single run on the machine. We did not often have as many as three or four runs side by side when the work was in

the machine. We have had that many and would repair it on the machine if it was decided that it was worth while to do so. If the runs occurred in a number like three or four soon after you had set up the work on the machine and started knitting, one would naturally find it to be advantageous to break the thread that feeds into the needles, run the work off the machine and start over. The length of time that it would take to reknit say four runs, an inch or so in length and get the loops on their respective needles would depend on the length of the runs and the kind of material that you are working 1400
on. I think I can do it as skillfully as others whom I have seen do like work on the machine.

XQ327. Now, will you please make four runs side by side, say an inch long, and let me see how fast you can do it? A. I don't remember an occasion when in ribbed knitting runs occurred side by side in all of the stitches so I am not in position to demonstrate or follow your instructions.

I mean that in ribbed knitting, such as appears in Exhibit 18, the alternating row or line of stitches are made by the ribber needles and the cylinder needles carry the loops remaining, so that the fabric contains first one row of ribbed stitches, then one row of cylindered stitches, then a row of ribber 1401
stitches, so that a series of runs lying one alongside of the other would not be reknit in the same manner.

It would seldom, if ever, occur that there would be as many as three runs in a machine of this type, in the ribbed knitting or type of work which is now set up in Exhibit 18. I did not say that before because Exhibit 18 was mentioned and not specifically the work that is now set up in Exhibit 18.

Some of our machines have been adapted for and make flat fabric as distinguished from ribbed. We

call that plain knitting. With the plain fabric we often have had more than a single run while in the machine. It is hard to say the highest number that I remember having side by side because runs usually occur in a knitting machine in knitting plain knitting because of a broken thread, and this usually causes anywhere from one to half or more of the cylinder needles dropping their stitches, which makes it impractical to attempt to reknit. In reknitting three or four runs in either plain or ribbed fabric while on the machine I would operate
1403 either way, between the fabric and the cylinder needles, or from the inside of the fabric, depending on whether it was dropped stitch from the cylinder needle stitch or the ribber needle stitch. The cylinder needle stitches are the one that stand up vertically and the ribber stitches stand perpendicularly to the cylinder needles, or at right angles to the plane of the cylinder needles. The cylinder needles are not now shown in Exhibit 18 as it appears now. They are in a box, but are offered as a part of the Exhibit. I used the term "perpendicular" or at right angles to the cylinder needles in describing how they formed the knitting when in use.

1404 I will not admit that I have described a number of conditions and operations that are not referred to in any of my books or printed literature. I have not pointed out in any of my different books specially how to handle several different runs when the runs occurred one alongside of the other.

In the repairing that I have thus far described no mention particularly was made of woolen yarn, nor did I have this in mind at all times, as the same Gearhart and other instructions, to my best knowledge, refer to any kind of material to be used in

knitting. Some of the books refer to other kinds of material than wool and cotton. In Plaintiff's Exhibit B, on page 30, reference is made to the use of rayon on silk hose and in the heading on the page as being practical to use through the mention of the fact that the silk or rayon wound on cones must be placed in such a position that the thread comes from the cones freely, etc.; but further on in the page there is reference to the fact that hosiery knitted out of rayon or silk on the hand knitting machine is not a product which could have much commercial value.

1406 Plaintiff's Exhibit B was published in 1927, as indicated on the inside of the front cover. I do not think that is the earliest reference in any of our published matter to silk and rayon, as the selling literature which was published and broadcast in answer to inquiries, to the best of my remembrance, referred to the use of silk, and as long as I can remember I have seen silk and cotton in addition to wool in the knitting mill from which some knitting was made from time to time. I cannot recall where statement can be found in any of our earlier publications than Plaintiff's Exhibit B, page 30, about the use of silk and rayon.

1407 I think the assumption is correct that our machines are not adapted for silk and rayon when silk alone is to be used, but it would be practical in using silk or cotton together with a heavier thread, such as wool. The cylinder mentioned in Plaintiff's Exhibit B on page 30 refers to a 140-needle cylinder, and, because our cylinders were die cast in the heavier gauges, this 140 cylinder referred to was grooved by machinery at the plant, or, in other words, hand made instead of cast, and the facilities at the plant were not adequate to make smooth ac-

curate work in grooving and finishing which would result in the practical use of silk and rayon for commercial knitting.

Yes, we discouraged the use of other than wool yarn and with our machines. In my testimony about reknitting runs in machines, for the purpose of this case, I was not referring to a comparatively coarse or coarse gauged yarn, generally made of wool—not fine wool, because very fine numbers of wool and worsted were carried by the company and supplied to its customers.

1409 In my demonstration yesterday I stated that what I was doing was according to my interpretation of the instructions in my books. By "interpretation" I mean when I read instructions I have to interpret those instructions to mean something, and practice what those interpretations signify.

When I spoke of repairers in my plant being given my printed instructions in order to learn how to repair and that different ones operated differently, I referred to the manner in which they would hold the repair cylinder needle, as this was optional to the mender as she might find it most convenient to use, rather than any particular other method than what was referred to and disclosed in the in-

1410 struction book. They did not necessarily all operate just alike. No difference was noted in so far as the catching of the loop in the needle hook and pushing it far enough through the fabric and withdrawing it again after the loop dropped off the end of the latch was concerned. I would not say they operated just about alike.

I do not recall any instructions in any of my printed literature instructing operators as to stretching the goods over a holder when out of the machine.

In my demonstration yesterday on the fabric in Exhibit 18, it was the rib stitch that I restored. If I was restoring a run in one of the hollows between two ribs, if the stitch was made by the cylinder needle, I would recognize that fact by looking at the fabric, and I would attempt to reknit that by the same method as disclosed in our instructions but by holding the cylinder repair needle at a different angle to the plane of the knitting than in repairing a ribber needle stitch, but the principle fundamentally is the same. The illustrations as printed on Exhibit 33 would illustrate my way of 1412
reknitting a series of slipped stitches made by the cylinder needle while the knitting was on the machine. The same description which I gave yesterday of my operation on the fabric in Exhibit 18, as to reciprocating the needle out of alignment with the run, would apply fundamentally where operating between the cylinder and the fabric as illustrated in Exhibit 33. By that I mean catching a loop in the hook and pushing it far enough through to cause the loop to slide down and off the end of the latch.

Our drawings show the needle approximately parallel with the side loops and in the middle of the 1413
ladder, but only approximately. A reciprocating motion is involved in this operation in addition to a turning motion of the needle. I understand that a reciprocating motion is such as would be demonstrated by the flywheel connecting rod on an engine. It does not necessarily have to be confined to operate precisely in the same position in so far as the turning on its own axis is concerned. What I referred to is the piston rod—the force exerted by the drive wheels. Fundamentally, if the connections are true and right, the piston rod goes back and

forth lengthwise without an intermediate turn, but if the pivot or bolt connected to the end of the piston shaft had even a slight play the rod could turn on its own axis and still be reciprocating in the full understanding of the term.

I have heard the expression "the scoring of a cylinder." If the piston did anything but reciprocate back and forth, no doubt damage would occur if it turned any considerable degree beyond what might be termed a dangerous point.

I have spoken of the term "reciprocation" and
1415 used it in my testimony so that I may have made myself clear in this testimony to the plaintiffs and Court, and it appears from my conversations with various people that this is now modern language recently adopted by those who are interested in the question of repair.

I did not go to Philadelphia entirely in response to the Olsen letter of December 7, 1929, Exhibit 36, as he interviewed me personally at Clearfield, some days before. I went in response to his letter and his interview, to testify in The Stelos Co. vs. Runner Needle. I am interested in the outcome of this case or these proceedings mainly in the fact that in my heart I believe that the Stephens Claim No. 23
1416 and patent issue No. 16,360, and, as described therein, the relation to a new use or method should not be sustained as just and right, inasmuch as this would deprive me of practicing the old and used prior practice which I and others have long enjoyed. I am deeply anxious and interested in seeing justice dealt fairly without any selfish motive.

I never made the assertion that I would like to help defeat this patent, as a public benefactor. I was sought, but quickly volunteered. In past years I have not had any part in patent litigation. I didn't get out of the business of the Gearhart Knit-

ting Machine Co., and the Clearfield Knitting Machine Co. five years ago. I resigned from the employ of the Clearfield Knitting Machine Co., in whose company I have considerable stock holdings, on May 1st, 1929, and have been consulted since that time in relation to knitting machine sales, as also urgently requested to return to the employ for the purpose of again exploiting or conducting ways and means of selling the same type of knitting machines as has been my practice since 1912.

I do not know whether The Stelos Company ever threatened the Gearhart Knitting Machine Co., or 1418
Clearfield Knitting Machine Co. with infringement of its patent, the patent in suit. To my knowledge, it never did threaten. I was never afraid of anyone ever suing either of the two companies or myself.

XQ390. I hand you a folder with the name "Gearhart Runner Knitter Co., Clearfield, Pa., U. S. A.," and with a copyright mark "G. R. K. Co. 1929" and will ask you what that is.

By Mr. Wooster: That is objected to as outside of the direct examination and not proper in this case.

A. These are instructions for using a latch needle 1419
for closing and repairing runs and instructions for mending, which I wrote since May 1st, 1929.

By Mr. Hodges: I will ask the Examiner to mark for identification a photostatic copy of this as Plaintiff's Exhibit E.

By Mr. Wooster: Same objection.

That needle is the same kind of a pivoted latch needle involved and secured from the same company with which the Gearhart companies have been doing business for some time and making pur-

1420 *Deposition of Emory J. Gearhart. Cross.*

chases of knitting machine latch needles. It has some additional features that the old needles previously described did not have. The illustrations in the cuts and shown partly in red are somewhat different as to the position of the needle from the cuts shown in Exhibit 33.

XQ394. Isn't the position of the needle with relation to the run considerably different?

By Mr. Wooster: This line of examination is objected to as outside of the direct examination, and is so far subsequent to the application date of the patent in suit as to have no bearing on this case.

1421

A. Figure 1 on the Plaintiff's Exhibit E varies slightly from Picture 1 on Exhibit 33 in so far as the angle of the latch needle takes to the line of the run; but the picture 1 on Exhibit 33 illustrates the needle looking through the runs in the fabric—or cross-threads in the fabric—because in Picture 1 the fabric is pictured on its reverse or wrong side, while the needle is resting in relation to the right and wrong side of the fabric in the same manner substantially as Figure 1 in Exhibit E illustrates but with the pivoted latch needle illustrated positioned at a little different angle.

1422

XQ395. About how much of an angle would you call that little bit of an angle? Would you say it was about one-fifth or one-sixth way around the circle from the ladder? In making your answer, please take it on the red figure.

By Mr. Wooster: Objected to as calling for a conclusion, because those views both appear to be isometric views, and such views obviously cannot be measured or guessed at as to angles.

A. The photographs referred to are on flat surfaces, and I have no means of definitely setting any particular degree of angle.

Straight across it is approximately three-quarters of an inch between the outer end of the handle illustrated in Figure 1 of Exhibit E at the point marked in pencil "X" and the center of the run marked "Y".

I am not familiar with the methods or ways in which hose are repaired in other mills than the former Gearhart mills.

In 1927 Mr. Fleming of Philadelphia, connected 1424
with the Runner Needle Company of that city, appealed by letter to me for my assistance in defense of a suit or bill which I understood would be tried some time in the future, and I committed myself to be of whatever assistance I could in defense of his rights, so that the letter of Mr. Olsen's, Exhibit 36, did not influence or change my decision made in 1927. I understood that Mr. Fleming was not still living at the time the Olsen letter was written.

It is not entirely right that, as outlined in two of the Exhibits 19 there was a plan published and exploited for selling the machines and furnishing the yarn to customers buying the machines and the
Gearhart Knitting Machine Co. agreeing to take all 1425
of the product of these machines from the purchasers and pay them for it. The Gearhart Knitting Machine Co. did not purchase hose, but merely paid for their knitting. I think the practice was started in 1919—to 1925. The company stopped the arrangement because of the appointment of receivers August 11, 1925.

XQ404. In the testimony you gave yesterday about complaints, did you mean that you had absolutely no complaints from customers about any-

1426 *Deposition of Emory J. Gearhart. Redirect.*

thing? A. I don't recall using the word "complaints" in my testimony yesterday. In the natural course of doing a mail order business or a retail business, complaints are usual, and we don't deny the fact that we receive complaints.

REDIRECT EXAMINATION BY MR. WOOSTER:

I don't recall of any complaints about the sufficiency of the directions in the instruction books for reknitting.

1427 The book by Miss Ada Weiner, copyright 1918, was sent to me by her during 1918 and I have had it in my possession in the records.

By Mr. Wooster: Photostats of the cover page, the inside first page, the back of the first page showing the copyright notice, and the last inside page (page 20) of the book just referred to are offered in evidence as "Defendant's Exhibit 37, Pages from Weiner Book."

RDQ408. Referring to Exhibit 33 and Plaintiff's Exhibit E for identification, was it or was it not your intention, when the draftsman drew the needle
1428 relatively to the run, to change in any way the method or procedure previously followed by you since your connection with the business in 1912 and the various reknitting instructions to which you referred in your direct examination.

By Mr. Hodges: That is objected to as leading.

A. No.

Picture 1 on Exhibit 33, is a picture of the run and the knitting in relation to the position of the

needle while the knitting was on the cylinder, which illustration was printed to describe or state what was meant by picking up a dropped cylinder stitch while knitting is on the machine, appearing in the headline.

In the picture, Figure 1 in Exhibit E, it was intended to picture the run and knitting in relation to the latch needle when the work or knitting was not on the machine—or a machine. So there is some difference in perspective. In Exhibit 33 the width of the run is entirely out of proportion to the size of the needle.

RDQ411. So that, if the run were drawn there as narrow as it should be in proportion to the scale of the needle, would not then the needle be at an angle laterally of the run? 1430

By Mr. Hodges: Objected to as leading.

A. Yes.

RDQ412. Refer particularly to Pictures 1 and 2 and answer the same question.

By Mr. Hodges: Same objection.

A. These pictures show the needle at an angle to the run. 1431

Deposition Closed.

1432 *Deposition of Roy G. Shaw. Direct.*

Deposition of ROY G. SHAW.

DIRECT EXAMINATION BY MR. WOOSTER:

ROY G. SHAW, a witness on behalf of the defendant, having first been duly sworn, testified as follows:

My name is Roy G. Shaw; age 53; residence, 216 West Sixth Avenue, Clearfield, Pa.; occupation, foreman—there are two companies where I am.
1433 One is the Superior Appliance and Pattern Co. and the other is Clearfield Knitting Machine Co. They are both the same people.

I have been employed by the Clearfield Knitting Machine Co., five or six years. I can't be exact as to date. Before that I was with the Gearhart Knitting Machine Co. The Gearhart Knitting Machine Co. went into the hands of receivers, and the machinery and business was bought over by the Clearfield Knitting Machine Co., or calling themselves Clearfield Knitting Machine Co.—the people that bought over. This company manufactures and sells the same stuff that the Gearhart Knitting Machine Co. did, with the exception they are manufacturing
1434 rug frames now and selling them.

I was employed by the Gearhart Knitting Machine Co., from 1902 to 1924. The firm name when I first started with them was I think J. E. Gearhart & Son. My position in 1902 was laborer; next assistant foreman, in 1908. I was made foreman in 1920. I was foreman over the whole works for say two years, between 1920 and 1922.

I recognize Defendant's Exhibit 18 machine. It is a Gearhart knitting machine. That machine is practically the same as what we call the 1908 model,

with the exception of the aluminum parts. They were iron at that time. The 1908 model differed from previous models manufactured from 1904 to 1908 in that it is a larger machine. The cylinder is larger, therefore a larger cam ring and machine.

The 1904 and 1908 models operated on the same principle. The model exhibited here was gotten out in 1908, excepting that the aluminum stuff was adopted in 1920. The only difference in the 1904 and 1908 models was in size. The cut on the cover page of Exhibit 24 shows a 1902 model. In 1902, the cylinder was turned with a crank or the gear with a crank wheel. That's the way I distinguish it. 1436

The model pictured on the cover of Exhibit 25 is a 1902 model. I am not familiar with that model as it was made prior to my time. Exhibit 24 is not the 1902 either. It was not manufactured by the company while I was with it. I refer to the model pictured on Exhibit 25. The model of Exhibit 24 was before my time too—before 1902. I would not say that the models pictured on Exhibits 24 and 25 are the same as to every detail. By looking I couldn't say. I'd say very little difference between the two; don't know that there's any difference. They are models before my time. 1437

The models in Exhibit 31 were put in production in 1908. I am talking about the machine—1904.—There are features on the two machines that I recognize. Looking at page 5 on both parts of exhibit 31, it's the same cut. If the cut is a true representation of what the machine was, it was manufactured in 1908.

The date of the model in the cut on the cover of Exhibit 28 was 1908. The model was changed in 1914. I do not know what change was made on the 1914 model that was not in the 1908 model.

1438 *Deposition of Roy G. Shaw. Direct.*

During my service with Gearhart & Son and Gearhart Knitting Machine Co., they published instruction books. They were sent out with each machine that went out. It was a part of my duty to see that a book was packed with each machine. That practice was followed in all cases where machines were shipped. Books were also sold separately from the machine. When books were sent out separately without a machine being sent, they were sent out from the office. Sending of books with each machine was done all the time that I was
1439 with them. The books were not always the same; they got out what was called the new instruction book; the wording was the same, mostly. I recognize Defendant's Exhibits 26, 28 in four parts, 29, 31 in two parts, and 32 as being sent out while I was there.

The machines were sent all over the United States and many of the foreign countries. Some of the countries were, Russia, Iceland, Mexico, Brazil, Canada. That's all that I just recall.

The instruction book, Exhibit 26, was on hand at the time I entered the employ of the company. I saw it first in the factory where they kept instruc-
1440 tion books. Copies were kept in the factory so that the employees could look at them if they wanted to. Some of the employees had machines in their homes while I was there and they had instruction books with them.

I first saw a run in knit goods repaired, in the factory. It was done with a regular knitting machine needle. I have done lots of them myself. The first time was in 1905. The way I came to do it was that every machine that went out was tested. There's a certain amount of knitting done on each machine. In doing the rib work there would be

occasionally a dropped stitch which would have to be picked up to make the work uniform before the machine was sent out.

I had knowledge of the knitting of hosiery by the Gearhart companies. It was being knit when I went there. When runs occurred in the knitting they were repaired. I saw it repaired. Runs were repaired both in the knitting shop and in the run-repair department. Both men and girls did the repairing of runs. The goods were held in various positions. I saw them hold them over needle-boxes —little boxes they got knitting machine needles in.

1442 They took a knitting machine needle and inserted through that last loop that had dropped—not had dropped—the last loop where the dropped stitch was. They pushed this needle through that last loop or stitch until the latch of the needle had cleared the loop. They withdrew the needle, catching the cross-thread above that loop; drawing it back through the loop, therefore, formed a stitch; and continued that operation until the loop—the dropped stitch was closed up to where it had dropped.

I also saw runs repaired where a thread had broken. At times that was done by drawing broken ends together and tying them. It was tied both be-

1443 fore and after the loops were reknit. You had to tie the end before you started to take up the dropped stitch. I am not familiar with what was done before I started to work. It was in practice while I was a laborer, and assistant foreman, and foreman.

CROSS EXAMINATION BY MR. HODGES:

By Mr. Hodges: I desire to record a general objection to all of the testimony of this witness

1444 because not cited in the order of the Court, but will proceed to cross-examine, not waiving the objection.

By Mr. Wooster: Counsel for defendant states that at the time the order was obtained from Judge Knox permitting the testimony of Mr. Gearhart and Mr. Miller in this city, it was not known to counsel that Mr. Shaw was available or had any knowledge of this case; and in that he is called to corroborate some of the testimony of Mr. Gearhart and no addi-
1445 tional expense is caused either party, it is hoped that the objection will not be insisted upon. If it is, counsel for defendant will apply to the Court for permission to have the deposition admitted as taken.

There were instruction books sent out that were ordered. We sent the instruction book that suited the particular machine that had been purchased. Instruction books were printed between 1902 and 1914 and sent out to purchasers of machines or to others.

I don't know when the first reprint was made after I entered the employ of the company. It is
1446 true as is stated in one of the instruction books that if the knitted article is properly weighted there is very little danger of a stitch dropping off one of the needles. When one did drop off it was unusual. The number of loops that would ordinarily be dropped in a run when a loop dropped from a needle, or a needle broke would depend on the grade of yarn you were using. The yarn was wool yarn. The number of loops up and down, to an inch, would depend upon the grade of wool you were using—the grade of yarn you were using. I would say the average is ten. If there was a run of

ten loops or a run an inch long, I would say it would take a minute for the average repairer of loops to restore that run and get it back on the needle.

The company I was working for did not ever use silk or fine thread in the manufacture of their products.

In beginning the repair work, the latch was opened by hand, if necessary; and in the operation of the repairing, the loop was opened by the stitch sliding up over it—it forced it open. I never had any trouble opening a latch. I don't know if any 1448
of the operators did. I don't say they never had any trouble. I don't admit that we used coarse material. With a relatively coarse material as compared with fifty threads to the inch, it did not leave space between the threads. In an inch space, the threads would be right together until they were stretched. By stretching I mean that the work had to be stretched by hand or some other means to open the loops—not the loops but the cross-threads. I do not mean you pull right down the line of the loop when you stretch, but spread the work sideways and down, or up, whichever the case may be. We would do that by different methods. My own experience, if it was a sort that was off the ma- 1449
chine, I would grasp the end of it between my knees— If it was on the machine, I inserted my hand up from the bottom of the machine up through the hose or piece or garment, stretch down and spread out, in order to open the cross-threads. My hand would naturally be smaller than the garment on the machine. Necessarily it would be tight in there, and I could pull down as well as stretch it. The others did it the same way. It was always done one way on the machine—by stretching. By

1450 that I mean, pulling the work lengthwise and stretching it out sideways from beneath the machine. I don't know how Mr. Gearhart did it. I saw him do it but can't remember how. I saw him do it a number of times.

XQ141. Will you proceed now to make a run on Exhibit 18 and restore the run for me the way you did it; and please do it just as fast as you can. Please explain just what you do as you proceed, so that we can get it on record; and I wish you would use the same needle that Mr. Gearhart used

1451 yesterday—Exhibit 23.

By the Witness: I am not going to use that needle.

By Mr. Hodges: I would like to have you use this needle.

By the Witness: Is anybody in authority to say whether I have to use that needle?

By Mr. Hodges: Yes, I am.

By the Witness: I think it is unfair to ask me to use a needle that's been lying around here, whether it is in order or not.

(Witness commences demonstration.)

1452 I just dropped a loop off one of the vertical needles and made a run of about 2½ inches long, on one of the upstanding rib stitches. I am now taking up the loop. I will push the needle through the loop that I have caught. I will pull the first cross-thread back through the loop. I will now push the needle through and grasp the second cross-thread. I will continue the operation. I open the latch by pushing the needle through the loop that I have already made. Just now I did not push the latch open by the thread forward—not the cross-thread. I am not doing it repeatedly. Where

I pull the needle out too far, it closes the latch and I have to push it a little farther to open it. I make an extra stroke when I do that. It happens quite often with me because I am out of practice. I do not turn my needle frequently—I turned it once. I do it in order to get down through the cross-threads without grasping more than one. I would say there is approximately five-thirty-seconds of an inch between the threads as I am holding it now. That leaves me space for the clearance of the latch.

XQ158. Now, will you please make a run between two of the ribs instead of through the rib, and restitch it, but don't make it quite as long; it makes too much work for you. 1454

(Witness commences demonstration.)

I have to watch it as I reloop these runs. I am now inserting the needle in the cylinder—between the work and the cylinder—garment and cylinder—whatever I employ. I am now putting my needle through the last loop—inserting it from the top of the run instead of the bottom. I do that because this is a cylinder stitch and shows on the outside or the finished side of the garment and, in order to restore a rib on the opposite side, you are obliged to put your needle underneath the fabric and insert it from the top of the run. I always turn the latch on the right side. With my hand I am reaching up through the cylinder, grasping the fabric, and pulling down. I am having difficulty in getting the hook and latch entangled because I am not in practice. In this last operation my needle was between the cylinder of needles and the fabric. I was operating on a ribbed fabric. I have operated on hosiery or other fabrics that were not ribbed. If it was fabric that was not ribbed, and on the machine, I would 1455

1456 have to go down between the cylinder and the knitting in order to pick up the dropped stitch.

The method I have demonstrated is according to the instructions contained in the instruction books sent out by my company. The instructions that have gone out in these instruction books have not, to my knowledge, been changed since I have been there. Instructions were also sent out on a single sheet as distinguished from book or pamphlet form —that is instructions for closing runners; also various instructions. I can't fix the date.

1457 REDIRECT EXAMINATION BY MR. WOOSTER:

When the machine, Exhibit 18, is set to run and complete, the bottom of the work is held tight, either by weights or hand when you are knitting. It is started with the weights. In case a run happens when the weights are on, I take them off before I reknit the run, and stretch with my hand. I don't recall ever seeing anybody reknit a run without taking the weights off. I think it would be a difficult job to reknit the loops of a runner with the weights on. I get a better stretch by doing it with my hand.

1458 RDQ186. When you reknit the second run for Mr. Hodges, could you have taken the work out of the machine and stretched it over the needle box or something like that and reknit it the same way you did the first run for Mr. Hodges in the machine, or different?

By Mr. Hodges: That is objected to as speculative and asking for mere conjecture.

A. I could.